COMPENDIUM OF GRIEVANCE ARBITRATION DECISIONS

2000

NOVA SCOTIA

Environment and Labour
Information and Business Services Division

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Nova Scotia Environment and Labour

Information & Business Services Division

Honourable David Morse
Minister

Kevin McNamara
Deputy Minister

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FOREWORD

This publication is the twenty-first summary of grievance arbitration decisions produced by Nova Scotia Environment and Labour. It is cumulative for 2000.

The decisions included here are those which have been filed in accordance with amendments to the Trade Union Act, effective May, 1978. On occasion, summaries of arbitrations outside the jurisdiction of the Act have been included. They are by no means representative of all arbitration cases outside the jurisdiction of the Trade Union Act, and have been included for general interest.

Results of appeals of arbitrations decisions adjudicated by the courts of Nova Scotia are received by this Department on an ad hoc basis and are included in this publication accordingly.

Part I of the publication contains decision abstracts for 2000. Indices contained in parts II through IV pertain only to the decisions for 2000. A full, cumulative index is scheduled to be issued at a later date. Indexing standards for arbitration awards follow Canadian Labour Arbitration by D.J.M. Brown and D.M. Beatty (Agincourt: Canadian Law Book Co., 3rd edition, 1991).

Copies of decisions will be made available to interested parties upon request and will be subject to a nominal charge for reproduction. Arbitration decisions under the Trade Union Act are now abstracted and indexed on a computerized database using InMagic software. The Department may provide copies of the database upon special arrangement. Please address all inquiries relating to printed and machine-readable formats to:

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May 29, 2001

COMPENDIUM OF GRIEVANCE ARBITRATION DECISIONS

2000

TABLE OF CONTENTS

Foreword

Part 1 : Listing of Grievance Arbitration Decisions, 2000 3

Part 2 : Subject Index, 2000 101

Part 3 : Employer & Union Index, 2000 110

Part 4 : Brown & Beatty Topical Code Index, 2000 120

Part 1

GRIEVANCE ARBITRATION DECISIONS

2000

DECISION: 2000-001

EMC Emergency Medical Care Inc. AND Nova Scotia Government Employees Union (NSGEU)

Clarke, Lorne O. - Chair; MacPherson, John C.; Nelson, Cam

Kimberley Turner, for the Union

N/A, for the Employer

January 19, 2000

ISSUES:
Interest arbitration 1:0000.

CIRCUMSTANCES:
This Arbitration Board (the Board) was formed to perform an Interest Arbitration pursuant to An Act to Provide for the Continuation of Ground Ambulance Services in the Province. This award concerns full-time and regular part-time Emergency Medical Technicians and Ambulance Attendants (Paramedics) serving all of Nova Scotia. The Board has attempted to form its decisions based on what the parties might have agreed to if they had been in a free and unfettered collective bargaining atmosphere.

AWARD:
The award consists of the Articles decided upon by the Board, along with some background regarding the history of these parties and the arbitration process in this case, and some explanation as to how the Board arrived at its decisions.

DECISION: 2000-002

Nova Scotia Power Inc. AND International Brotherhood of Electrical Workers (IBEW), Local 1928

Outhouse, S. Bruce - Arbitrator

Ray Larkin, for the Union

Jamie Campbell, for the Employer

January 20, 2000

ISSUES:
Discrimination - Age 7:7200; Statutes - Applied by boards of arbitration 2:2100; Pension plans - Incorporated into agreement 4:1400.

CIRCUMSTANCES:
The Union alleges that the Employer violated the Collective Agreement and discriminated against bargaining unit members on the basis of age, contrary to the Human Rights Act (Act). The Union argues that by implementing an Early Retirement Incentive Program (ERIP), the Employer unilaterally changed the terms of the Agreement and thereby violated it. As remedy, the Union seeks a declaration that the 1997 ERIP violated the Agreement, and to have the Employer restore the financial loss incurred by the Pension Plan as a result of the 1997 ERIP. The Employer argues that it did not amend the Pension Plan in a manner that would directly conflict with the Agreement, and that the extra service credits that it offered on a limited basis were provided outside of the Pension Plan. Further, the Employer argues that the Arbitrator does not in this case have the jurisdiction to decide statutory provisions under the Act, and if it does the ERIP is a bona fide retirement or pension plan under the Act.

AWARD:
The grievance succeeds in part. The declaratory remedy requested by the Union is satisfied by a finding that the Employer breached the Agreement. The impact of the ERIP as a unilateral Employer initiative was to render various articles of the Agreement inoperative for a specified time period, and as such violated the Agreement. The Arbitrator, having jurisdiction to decide if the ERIP violates the Act, finds that the Employer did not discriminate against bargaining unit members on the basis of age, as the ERIP is allowed under the Act. The Union is entitled to be compensated for damages under the principles which govern breach of contract. The parties are instructed to attempt a satisfactory resolution on this issue, and the Arbitrator retains jurisdiction over the issue of consequential relief.

DECISION: 2000-003

Deep Sea Trawlers AND United Food & Commercial Workers Union (UFCW), Local 864

Veniot, Milton J. - Arbitrator

Kimberley H. W. Turner, for the Union

Eric B. Durnford, for the Employer

January 5, 2000

ISSUES:
Discipline and discharge - Evidence - Standard of proof 3:2500; Safety - Refusal to obey order

7:3621; Disciplinary penalties - Mitigating factors 7:4400; Arbitral review - Substitution of penalty 7:4000.

CIRCUMSTANCES:
This grievance concerns the dismissal of six Crew Members from the off-shore scallop vessel, the Ernest E. Pierce, for allegedly disobeying the Captain, refusing to fish and stopping work. The Union argues that the refusal to work was due to safety factors: bad weather, bad hoist brakes and a physical safety hazard. The Employer argues that none of these issues were really the concerns of the Mate's Watch, of which the Grievors were part, but that these crew members were instead trying to support the Captain's Watch which had refused to fish earlier.

AWARD:
The grievance succeeds in part. The Grievors will be reinstated without accumulating benefits, seniority, and their good records will be lost. The seriousness of the incident is enough that no compensation will be awarded to the Grievors, and they are considered suspended with time served. The Collective Agreement was breached by the Grievors, yet they believed that they were being asked to do too much in bad weather. Extensive evidence shows, however, that it was not reasonable to believe that it was too dangerous to fish. The Mate's Watch was wrong to challenge the Captain's judgement in these circumstances, as it ventured into territory challenging the Captain's control of the ship. Although the refusal to fish was unjustified, the crew's fishing practices under a previous captain is a mitigating factor and the incident is not at the level of seriousness that the employment relationship has to be severed.

DECISION: 2000-004

Saint Mary's University AND Nova Scotia Government Employees Union (NSGEU), Local 79

Archibald, Bruce P. - Chair; Maxwell, Bernadette; Ritch, Lorabeth

Ann Barrett, for the Union

Karen Oldfield, for the Employer

January 7, 2000

ISSUES:
Work assignment 5:1000; Job posting - Posting procedure 5:2520; Interpretation - Words and phrases - Skill and ability - Qualifications 6:3000; Skill and ability - Trial, training and familiarization periods 6:3230; Burden of proof 6:3200.

CIRCUMSTANCES:
The Grievor claims that she was denied preference as an internal candidate for the position of Library Assistant III, and proper procedures were not followed in awarding the job to an external applicant. Further, the Union argues that the Employer amended the job posting by requiring specific experience not listed, and that there was bias in preference of the incumbent. The Union seeks to have the position awarded to the Grievor as remedy. The Employer claims that the Grievor is not qualified for the position and that no procedural errors were committed.

AWARD:
The grievance fails. Unfairness, bias or a reasonable apprehension of bias has not been proven and the Employer is found to have complied with the spirit and the letter of the Collective Agreement insofar as the awkward wording allowed. The Employer, in establishing a requirement for a year's experience performing original cataloguing, is not unreasonable. Thus, the Grievor does not meet the minimum requirements for the position, and as such is not entitled to preference over external applicants.

DISSENT:
The intention of the parties, in forming the Collective Agreement, to provide bargaining unit employees employment preference over outside applicants is clear from a number of articles. The evidence indicates that the selection panel sought to hire "the best candidate," which was not their mandate under the Collective Agreement. The Collective Agreement provides for bargaining unit employees to demonstrate their abilities when advancing, and the Grievor was denied such an opportunity. The dissenting Arbitrator would award the position to the Grievor.

DECISION: 2000-005

Chignecto Central Regional School Board AND Nova Scotia Teachers' Union (NSTU)

MacDonald, David J. - Arbitrator

Lorraine Lafferty, for the Union

Bruce MacIntosh, for the Employer

January 11, 2000

ISSUES:
Work assignment 5:1000; Job posting - Posting procedure 5:2520.

CIRCUMSTANCES:
The Union claims that the hiring procedures used to select the Vice-Principal are in violation of Article 3.03 of the Collective Agreement. The Employer agrees, in part, that the hiring procedure

was not in accordance with the staffing procedure requirements, and further agrees to redo the selection process. The parties additionally require an interpretation of the staffing procedures regarding consideration of an external applicant. The Union argues that only when there is no internal applicant who meets the staffing requirements can the Employer consider an applicant outside of the bargaining unit. The Employer argues that any teacher may apply for an administrative position and be considered equally with all other applicants.

AWARD:
The grievance succeeds. The Employer must overturn the appointment of Vice-Principal and redo the selection process. There is nothing, however, in Appendix A which precludes the Employer from considering outside applicants concurrently with bargaining unit applicants, for administrative positions. Other sections of the Collective Agreement that may place such restrictions on the hiring of teachers do not apply here.

DECISION: 2000-006

Joneljim Concrete Construction Ltd. AND United Brotherhood of Carpenters & Joiners of America, Local 1588

Ashley, Susan M. - Arbitrator

Raymond Larkin, for the Union

Robert Sampson, for the Employer

January 14, 2000

ISSUES:
Interpretation - Intention of the parties 4:2100; Management rights 4:2300; Words and phrases - Skill and ability - Qualifications 6:3000; Lay-off 6:2200.

CIRCUMSTANCES:
The Union argues that the Job Steward appointed for the construction project was laid-off contrary to Article 4.06 of the Collective Agreement. The Union states that the Grievor was not "the second last man remaining on the job/shop" as required by the article. The Employer argues that the Job Steward appointment was not made properly under the Collective Agreement, and that the lay-off was appropriate and reasonable relying on Article 5.01, Management Rights Clause.

AWARD:
The grievance succeeds. The Job Steward was properly appointed under the Collective Agreement. Further, the Grievor was qualified to do the work while second last person on the job. Even though the Employer's decision to lay-off the Grievor was made prior to his appointment as Job Steward

and for sound business reasons, the Business Manager was not aware of this decision at the time he appointed the Grievor. Although the timing of the appointment was awkward, the Collective Agreement places no limits on when or why a Job Steward shall be appointed, and the Grievor was laid-off when there were at least two other men on the job, therefore the Grievor is entitled to one week's pay.

DECISION: 2000-007

Yarmouth (Town) AND Yarmouth Firefighters' Assn., Local 2094

MacLellan, J. A. - Arbitrator

James Dipersio, for the Union

Malcolm Boyle, for the Employer

January 12, 2000

ISSUES:
Time-limits - Waiver of 2:3130; Mandatory or directory 2:3128; Delay 2:3210.

CIRCUMSTANCES:
The issue to be determined is whether the parties mutually agreed to waive the time limits set out in Article 12 of the Collective Agreement. The Union argues that there was an agreement to waive the time limits for the grievance procedure until after criminal proceedings against the Grievor. The Employer argues that the time limits in the Collective Agreement are mandatory and that there was no waiver. Further, the Employer argues that there was an implied waiver, then clearly the waiver could only extend to the completion of the criminal proceedings.

AWARD:
The grievance fails. The Union acknowledges that the time limits are mandatory, yet the Employer acknowledges that it may have unwittingly implied a waiver of the time limits. The Union, however, cannot explain the lengthy delay between the end of criminal proceedings in 1996 and the resumption of the grievance procedure in 1998. For the Union to delay for this excessive two year period, when nothing was preventing them from proceeding, is clearly out of time.

DECISION: 2000-008

Halifax Regional Municipality AND Halifax Civic Workers, Local 108

Outhouse, S. Bruce - Arbitrator

Lionel Clarke, for the Union

Jamie Campbell, for the Employer

January 31, 2000

ISSUES:

Job posting - Job description posted 5:2200; Progressive discipline - Warning 7:4416; Disciplinary penalties - Arbitral review - Substitution of penalty 7:4000; Discrimination - Discipline - Onus 7:4414; Work assignment - Bargaining unit work 5:1200.

CIRCUMSTANCES:

The Grievor alleges, in eight of 10 grievances, that non-bargaining unit employees performed bargaining unit work. The Employer does not contest the list of activities presented by the Grievor, which leaves the issue of whether or not the performance of these activities constitutes a breach of the Collective Agreement. The Grievor also alleges that the Employer harassed and discriminated against him and that a series of actions were carried out in an effort to eventually dismiss him. Finally, the Grievor claims that a four-week suspension was imposed without just cause. The Employer argues that the suspension is justified, as the Grievor "declared war" in an effort to secure his job. The Employer further alleges that the Grievor made false allegations of a serious nature for his own purposes. The Union argues that the Grievor acted in good faith, did not deliberately mislead the Employer and that the allegations had merit.

AWARD:

Nine grievances are dismissed and one succeeds in part. A suspension of 10 working days is substituted for the four-week suspension imposed. The Grievor was very uncooperative on the job, and his allegations regarding the Employer's mismanagement of the job site were exaggerated. The Grievor's misconduct was serious enough to warrant a strong disciplinary response, but the Employer should have followed the principle of progressive discipline for a first time offence. The Union did not show that work performed by non-bargaining unit employees breached the Collective Agreement, resulting in the dismissal of eight grievances. These include the "job posting grievance," which is a non-issue, as the Employer withdrew the job posting when the Union voiced its objections. The grievance concerning harassment and discrimination is dismissed. The Employer's actions were well within its rights and no campaign of harassment or discrimination was found.

DECISION: 2000-009

Southwest Regional School Board AND Nova Scotia Teachers' Union (NSTU)

Lederman, Peter - Chair; MacIntosh, Bruce; MacPherson, Ronald

Lorriane Lafferty, for the Union

Noella Martin, for the Employer

January 27, 2000

ISSUES:
Interest arbitration 1:0000.

CIRCUMSTANCES:
This Arbitration Board (the Board) was formed to perform an Interest Arbitration pursuant to section 19 of the Teachers' Collective Bargaining Act. The Board was asked to decide contentious provisions found in Articles 8 through 14, and to decide on new articles proposed by the Union and opposed by the Employer.

AWARD:
This award consists of the Articles decided upon by the Board, whose deliberations have been wide ranging and comprehensive. All relevant evidence and submissions have been thoroughly considered.

DECISION: 2000-010

CTS Electric AND International Brotherhood of Electrical Workers (IBEW), Local 625 AND United Assn. of Journeymen & Apprentices of the Plumbing, Steam-Fitting & Pipe-Fitting Industry of the United States and Canada, Local 244

Slone, Eric K. - Arbitrator

Raymond Larkin, for the Union

Scott Sterns, for the Employer

February 2, 2000

ISSUES:
Statutes - Applied by Boards of Arbitration 2:2100.

CIRCUMSTANCES:
This grievance claims that the Employer had a continuing obligation to pay its Electrical Workers and Plumbers while they were laid off, following a work refusal pursuant to the Occupational Health and Safety Act (OHSA). On or around September 28, 1999, the Electrical Workers and Plumbers exercised a refusal to work when they learned about the discovery of asbestos in the workplace. On October 2, 1999, the Employer laid off all of its work force, recalling them on October 11, 1999, with some reassignments having been made on October 8 and 9, 1999. The Unions claim entitlement to transportation and subsistence allowances, along with the other benefits and pay that would have been paid to the employees during the lay off period.

AWARD:
The grievance succeeds. Like the four previous cases, which arose from the same circumstances and have similar facts and arguments, this Employer cannot escape its obligation to pay its employees by way of a short lay off. The affected employees are entitled to be paid the same wages and to receive the same benefits that they would have received had they continued to work.

DECISION: 2000-011

Black and McDonald AND ICS/The State Group Ltd. AND International Brotherhood of Electrical Workers (IBEW), Local 625 AND United Assn. of Journeymen & Apprentices of the Plumbing, Steam-Fitting & Pipe-Fitting Industry of the United States and Canada, Local 244

Ashley, Susan M. - Arbitrator

Raymond Larkin, for the Union

Scott Sterns, for the Employer

December 17, 1999

ISSUES:
Statutes - Applied by Boards of Arbitration 2:2100.

CIRCUMSTANCES:
This grievance claims that the Employers had a continuing obligation to pay their Electricians and Plumbers while they were laid off, following a work refusal pursuant to the Occupational Health and Safety Act (OHSA). On September 28, 1999, the Electricians and Plumbers exercised a refusal to work when they learned about the discovery of asbestos in the workplace. On October 2, 1999, the Employers laid off their workers, recalling them on October 12, 1999. The Unions claim

entitlement to transportation and subsistence allowances, along with the other benefits and pay that would have been paid to the employees during the lay off period.

AWARD:

The grievance succeeds. Like the three previous cases, which arose from the same circumstances and have similar facts and arguments, this Employer cannot escape its obligation to pay its employees by way of a short lay off. The affected employees are entitled to be paid the same wages and to receive the same benefits that they would have received had they continued to work.

DECISION: 2000-012

I.M.P. Aerospace Components Ltd. AND United Steelworkers of America, Local 4883

Outhouse, S. Bruce - Arbitrator

Cal Luedee, for the Union

Ronald Campbell, for the Employer

February 10, 2000

ISSUES:
Job posting - Posting procedure 5:2520; Skill and ability - Trial, training and familiarization periods 6:3230; Burden of proof 6:3200; Criteria of ability and qualifications 6:3300.

CIRCUMSTANCES:
This grievance concerns a job posting and, although the Grievor died subsequent to the hearing, the parties have requested that an award be made. The Grievor had applied for the position of Inspector, and believed that he had seniority and was qualified. The Union claims that the Grievor had the basic qualifications and should have been given the benefit of the 45-day familiarization period referred to in Articles 11.04 and 11.05. Further, the Union states that the Employer is bound by the terms of the job posting and that the Employer changed the terms of the posting after the fact. The Employer claims that the Grievor was not qualified, and that the Union failed to prove that the Grievor had the ability to perform the work of an Inspector. The issues are whether the qualifications in the job posting were reasonable and whether the Grievor met them.

AWARD:
The grievance fails. The 45-day familiarization period of Articles 11.04 and 11.05 comes into effect only if the employee already has the ability to perform the work, as per Article 11.02. The qualifications that the Employer relied upon are reasonable, and the Union failed to show that the Grievor had the ability to perform the job without the benefit of further training or experience.

DECISION: 2000-013

Cape Breton-Victoria Regional School Board AND Canadian Union of Public Employees (CUPE), Local 5050

Veniot, Milton J. - Arbitrator

Barbara Kowalski, for the Union

Robert Sampson, for the Employer

January 12, 2000

ISSUES:
Settlements 2:3230.

CIRCUMSTANCES:
The Grievors, two Students' Aides, allege that the Homeroom Teacher with whom they worked subjected them to harassment, intimidation, defamation and unfair treatment. The matter was settled by the parties during the course of the hearing.

AWARD:
There is no award, as the grievance was settled.

DECISION: 2000-014

Western Regional Health Board AND Canadian Union of Public Employees (CUPE), Local 4150

Veniot, Milton J. - Arbitrator

John K. Poirier, for the Union

Ronald A. Pink, for the Employer

January 10, 2000

ISSUES:
Settlements 2:3230.

CIRCUMSTANCES:
This is a consent award. During the course of the hearing, the parties agreed on terms of settlement.

AWARD:
The parties agree to the following terms: the Employer will pay the Grievors the "lost" increment and all lost premiums; the monies will be paid within thirty days of January 10, 2000 and will be paid without interest if paid within the agreed time period; and the Union will not pursue further grievances for similar lost increments.

DECISION: 2000-015

Jacob Santini Construction Services AND Labourers' International Union of North America, Local 615

Slone, Eric K. - Arbitrator

Neil Hatt, for the Union

N/A, for the Employer

February 14, 2000

ISSUES:
Settlements 2:3230.

CIRCUMSTANCES:
This is a consent award. The Union alleges that the Employer hired Non- Union Labourers to perform Union work, owes wages to one employee, and owes benefit bond and benefit payments for two employees.

AWARD:
The parties agree that: the Employer has breached the Collective Agreement; the Employer agrees that the damages owed are $3,000.00; and the Employer will pay the Union $3,000.00 as damages.

DECISION: 2000-016

Farmers Co-operative Dairy Ltd. AND Communication, Energy & Paperworkers Union of Canada (CEP), Local 40N

Christie, Innis - Arbitrator

Barney Dobbin, for the Union

Karin McKaskill, for the Employer

February 13, 2000

ISSUES:
Discipline and discharge - Procedural limitations on discipline 7:2100; Grounds for - Absence from work - Failure to notify employer 7:3110; Disciplinary penalties - Culminating incident 7:4310; Arbitral review - Scope 7:4100.

CIRCUMSTANCES:
The Grievor claims that he was unjustly discharged, and seeks reinstatement with full compensation for lost pay and benefits. The Employer discharged the Grievor for failure to report to work or to call in, together with his history of failing to report to work. The issues are whether the Grievor's actions justified discipline, whether it was a culminating event, and what discipline, if any, should be substituted. The Union argues that the Collective Agreement stipulates circumstances under which an employee's disciplinary record becomes clean in Article 24 J, and that this is such a case, resulting in the Employer's inability to use the prior incidents that it cites. The Employer argues that a verbal warning was given in 1998, which kept alive the previous incidents mentioned.

AWARD:
The grievance succeeds in part. The Arbitrator finds that to use an unrecorded matter, perhaps even non-disciplinary, to keep active a disciplinary record covered by Article 24 J, would defeat the purpose of that article. The cited incidents prior to 1999 cannot be used to determine discipline in this case. The Grievor's failure to report to work in February of 1999 justified discipline, but not discharge. The Grievor is tc be reinstated and fully compensated for all pay and benefits lost as a result of his discharge, minus the equivalent of an eight week suspension without pay.

DECISION: 2000-017

Governors of Acadia University AND Acadia University Faculty Assn.

Veniot, Milton J. - Chair

Maureen Webb, for the Union

Eric B. Durnford, for the Employer

February 11, 2000

ISSUES:
Settlements 2:3230.

CIRCUMSTANCES:
The Union alleged that Demonstrators employed by the University, who had contracts of less than 12 months, were receiving vacation pay at a rate that violated the Collective Agreement. The Union withdrew the grievance at the end of the second day of the hearing.

AWARD:
There is no award in this matter.

DECISION: 2000-018

University College of Cape Breton AND Canadian Union of Public Employees (CUPE), Local 3131

Veniot, Milton J. - Arbitrator

N. Blaise MacDonald, for the Union

Eric B. Durnford, for the Employer

February 7, 2000

ISSUES:
Seniority - Applications - Promotion, demotion and transfer 6:2000, 6:2100; Skill and ability - Criteria of ability and qualifications 6:3300.

CIRCUMSTANCES:
The Grievor was not the successful candidate in a competition for records secretary. The Union's position is that the Grievor possessed the minimum qualifications and had the advantage of seniority over the successful applicant. The Employer's position is that the Grievor gave false testimony in his application for the position, that he did not have the minimum qualifications, and that the competition reached an appropriate conclusion.

AWARD:
The Grievance fails. While the Arbitrator dismisses the Employer's accusation that the Grievor gave false testimony, he finds that the Grievor failed to make a convincing case to the selection committee that he was the relative equal of the successful applicant. Failing that, the issue of seniority would not be applicable.

SEE ALSO:
2000-018. A

DECISION: 2000-018. A

University College of Cape Breton AND Canadian Union of Public Employees (CUPE), Local 3131

Veniot, Milton J. - Arbitrator

N. Blaise MacDonald, for the Union

Eric B. Durnford, for the Employer

December 31, 1998

ISSUES:
Arbitrability - Agreement as primary source of jurisdiction 2:1200; Time-limits - Waiver of 2:3130.

CIRCUMSTANCES:
This hearing is to deal with preliminary objections on the question of arbitrability. The Employer argues that the Grievor was not a member of the bargaining unit, and therefore has no right to file a grievance. Furthermore, the time-limits on this matter have been exceeded, and the Employer cannot waive them. The Union's position is that the agreement between the Employer and the Union giving the Grievor certain seniority rights also gives the Grievor other rights under the Collective Agreement, including the right to grieve. It also argues that the Employer is estopped from relying on its rights with respect to time-limits.

AWARD:
The preliminary objections are dismissed. The Grievor's right to seek redress through the grievance procedure is upheld. The Employer has the right to waive its rights regarding time-limits on this grievance. In fact, the Employer is estopped from relying on the provision of the Agreement concerning time-limits because its actions constituted a series of representations to the Union that time-limits would not be an issue.

SEE ALSO:
2000-018

DECISION: 2000-019

Cape Breton Healthcare Complex AND National Automobile, Aerospace, Transportation & General Workers Union of Canada (CAW-Canada), Local 4600

Ashley, Susan M. - Arbitrator

Victor Tomiczek, for the Union

Ray Kuszelewski, for the Employer

March 1, 2000

ISSUES:
Skill and ability - Arbitral review - Senior employee with required ability 6:3210; Job posting - Criteria - Education 6:3320.

CIRCUMSTANCES:
The Grievor, a nursing assistant for the Employer, applied for the posted position of activity director. No internal candidates had the educational background required by the Employer, and the job was filled externally. The Union's position is that the educational requirement was unreasonable. Given the Grievor's long experience with organization of activity and recreation in her capacity as nursing assistant, she had the skills and ability to do the job, and this, combined with her seniority, should have made her the logical candidate. The Employer's position is that it has the right to establish job requirements to ensure that the increasing standards of quality of life needs for the elderly, which have led to a need for higher levels of training and education, are met.

AWARD:
The Grievance fails. The educational requirements established by the Employer were not unreasonable, nor were they imposed for any improper motive. The Grievor's long seniority would only have become an issue in the event that she had possessed the minimum requirements for the job, and thus had been "relatively equal" to the successful candidate.

DECISION: 2000-020

Riverview Children's Centre AND Canadian Union of Public Employees (CUPE), Local 3860

Lederman, Peter - Arbitrator

Kelly Murray, for the Union

Anne K. Gallop, for the Employer

February 29, 2000

ISSUES:
Disciplinary penalty - Arbitral review - Substitution of penalty 7:4000; Disciplinary penalty - Reasonableness 7:4300.

CIRCUMSTANCES:
The Grievors were child care workers in a daycare centre. They were dismissed for leaving a child alone in a room and shutting the door, in violation of the policy on discipline. The Employer's position is that the action of the Grievors merits dismissal, that the action could have brought civil action upon the centre, that it could have caused serious injury to the child, and that the Grievors have shown no remorse for their action. It is the position of the Union that the child was not isolated as a form of discipline, that the parent of the child did not blame the Grievors for the incident, that the parent stated that the child had suffered no damage as a result of the action, that this was an isolated incident in the employment record of three experienced and trustworthy individuals, and that the penalty of dismissal is excessive in light of penalties previously levied by the Employer for similar actions.

AWARD:
The Grievance succeeds. The Arbitrator finds that the penalty of dismissal is excessive, and substitutes a period of suspension.

DECISION: 2000-021

Community Lodge Inc. AND National Automobile, Aerospace, Transportation & General Workers Union of Canada (CAW-Canada), Local 4620

Sodero, T. Peter - Arbitrator

Lynn Pollock, for the Union

Ellen MacKinnon, John G. Khattar, for the Employer

February 29, 2000

ISSUES:
Vacancy 5:2510; Job posting - Posting procedure 5:2520.

CIRCUMSTANCES:
The Grievor anticipated applying for a job that became vacant in her unit when the incumbent transferred to a trial posting. She asked management to post the job as soon as the incumbent left; the job remained unposted for nearly four months. The Grievance is to determine when the Employer was required to post the vacant position, and whether the Grievor lost wages and benefits as a result of the Employer's failure to post. The Employer contends that it is up to management's discretion to withhold posting a position until it is clear that the incumbent will not ask to be returned to that position. The Union's position is that the job should have been posted 14 days after it was vacated, regardless of whether the incumbent moved to a trial position or a permanent position, and without regard for the incumbent's right under the Collective Agreement to return to her old job within 45 days.

AWARD:
The Grievance succeeds in part. The Arbitrator determined that the position should have been posted when its incumbent was promoted to a permanent position elsewhere. The Grievor is entitled to wages and benefits she lost during the period of time between the date when she should have been promoted, and the date she was promoted to another job.

DECISION: 2000-022

Kings County (Municipality) AND Police Assn. of Nova Scotia

Kydd, William H. - Arbitrator

N/A, for the Union

N/A, for the Employer

Date: N/A

CIRCUMSTANCES:
The matter was settled with no written decision.

DECISION: 2000-023

Halifax Regional School Board AND Nova Scotia Union of Public Employees (NSUPE), Local 2

Outhouse, S. Bruce - Arbitrator

N/A, for the Union

N/A, for the Employer

Date: N/A

CIRCUMSTANCES:
The matter was settled with no written decision.

DECISION: 2000-024

Cape Breton Healthcare Complex AND Nova Scotia Nurses' Union (NSNU)

Outhouse, S. Bruce - Arbitrator

David Roberts, for the Union

Raymond Kuszelewski, for the Employer

March 2, 2000

ISSUES:
Retroactivity 8:1300.

CIRCUMSTANCES:
This is a policy grievance on behalf of casual nurses, to determine the date to which salary adjustment is retroactive. It is the position of the Union that articles covering retroactive payments are equally applicable to permanent and casual nurses, and there is no justification to accord casual nurses a lesser degree of retroactivity. The Employer takes the position that wage adjustments for casual nurses can only be retroactive to the date of the Collective Agreement, because before that date casual nurses were not part of the bargaining unit. Furthermore, there will be serious financial repercussions if the Union's interpretation is advanced, both to the Employer, and to 119 employees who will suffer a loss in pay.

AWARD:
The Grievance succeeds. The articles in question clearly and unambiguously apply equally to all nurses in the bargaining unit and cannot be interpreted in such a way as to produce one result for casual nurses and a different result for all other nurses. While it is unfortunate that the Employer will bear a cost it did not anticipate during collective bargaining, it was not misled by the Union. The mistake in costing is unilateral, and has no bearing on the construction or application of the Agreement.

DECISION: 2000-025

Cape Breton Regional Municipality AND Canadian Union of Public Employees (CUPE), Local 3310

Veniot, Milton J. - Chair; McDougall, Donald H.; Pollock, Lynn

N. Blaise MacDonald, for the Union

Eric B. Durnford, for the Employer

February 21, 2000

ISSUES:
Contracting out 5:1300; Interpretation - Intention of the parties 4:2100; Union - Recognition 9:1100.

CIRCUMSTANCES:
The Employer contracted with Serco Facilities Management to manage and operate Centre 200. The Union alleges that the Employer's agreement with Serco violated Articles of the Collective Agreement on job security, contracting out or subcontracting, and union recognition. The Employer protests an amendment to the Grievance with respect to three named individuals on the grounds that this was an attempt to reopen a settled Grievance. With respect to allegations of breach of the Collective Agreement, it states that contracting out was permitted. On the score of failing to notify the Union of changes in operation within three months, the Employer notes that its plan to seek an alternative means of running Centre 200 was made quite public. On the issue of union recognition, it argues that the activities of which the union complained were carried out by Serco, not by the Employer. With respect to three employees who the Union states should have retained additional rights under the Agreement, the Employer acknowledges no breach, and states that the Article in question has been satisfied. Finally, the Employer denies that the Board may bifurcate the hearing into a hearing on merits and a hearing on remedy.

AWARD:
The Grievance succeeds in part. The Board finds that the amendments sought by the Union arise out of the same facts, and are granted; that the Employer has breached the Article on contracting out; that the Employer failed to notify the Union of its intention to change its methods of operation; that the Employer was a party to Serco's plans to deal directly with employees rather than recognising and dealing with the Union as bargaining agent. With respect to the Union claims for additional rights for three employees, the Board finds that there is no breach. The Board reserves on all matters of remedy.

DISSENT:
(McDougall) The Agreement limits the Employer's right to contract out only to the extent of requiring timely notification. The Employer's only breach in the respect was its failure to notify the Union within three months. Because the Union has been unable to show that there was loss or damage to any employees as a result of the Employer's actions, the Grievances should be dismissed.

DECISION: 2000-026

Dalhousie University AND Dalhousie Faculty Assn.

Kuttner, Thomas S. - Arbitrator

Burnley Jones, for the Union

Eric Durnford, for the Employer

April 28, 2000

ISSUES:
Bias 1:5210, 3:1100.

CIRCUMSTANCES:
This decision is based on a preliminary procedural issue. The Union states that the Arbitrator's past professional acquaintance with participants would meet the test of reasonable apprehension of bias. The position of the Employer is that the test of reasonable apprehension of bias is a stringent one, and that grounds for such must be substantial.

AWARD:
The Arbitrator recuses himself. His relationship with one of the participants is such that justice might not "reasonably appear to be disinterested".

DECISION: 2000-027

OIS-Fisher Inc. AND Bluewater Stevedore Union, Local 2

MacKeigan, Peter J. - Arbitrator

Wade D. Weeks, Murray MacDonald, for the Union

D. Bradford L. Wicks, for the Employer

April 17, 2000

ISSUES:
Jurisdiction - Sources - Collective agreement 2:1200.

CIRCUMSTANCES:
This is the result of a hearing to determine whether the Arbitrator has jurisdiction. According to the Employer, there is no Collective Agreement, and the dispute must be taken up with the Labour Relations Board. The Union declares that because the Collective Agreement was followed, and the Employer deducted Union dues from wages and remitted them to the Union, there is a Collective Agreement between the parties.

AWARD:
The Arbitrator finds that he does not have jurisdiction. Although the Employer accommodated the Union in observing the terms of the Collective Agreement and paying Union dues, there is no valid Collective Agreement. Since an Arbitrator's jurisdiction arises under the Agreement, and there is no Agreement, the Arbitrator lacks jurisdiction.

DECISION: 2000-028

Halifax Regional Municipality AND Municipal Assn. of Police Personnel (MAPP)

Archibald, Bruce P. - Arbitrator

Raymond F. Larkin, for the Union

Terry L. Roane, Kim Von Arx, for the Employer

April 20, 2000

ISSUES:
Management rights - Vacation scheduling 8:3240; Negotiating history 3:4420; Past practice 3:4430.

CIRCUMSTANCES:
This is policy Grievance to determine whether the Employer may block vacations picks during a specific period. The Employer announced that due to potential Y2K problems, no vacations could be scheduled from December 26, 1999 to the end of February 2000. It is the Employer's position that such a decision falls within management rights provisions. Furthermore, the Employer has, in the past, blocked out certain periods from selection for vacation when it was clear that would be high staffing requirements. Lastly, the Employer claims that it is evident that the Union understands that this is a management right because during Collective Agreement negotiations it has attempted to limit that right. The Union argues that seniority rights as outlined in the Agreement exclude any management right to block vacation picks.

AWARD:
The Grievance fails. There is nothing in the Agreement which explicitly prohibits management from

blocking out specific periods in a non-discriminatory, non-arbitrary, good faith, reasonable fashion to cope with periods of potential difficulty. Furthermore, the Arbitrator notes that both past practice and negotiating history militate against the Union's position.

DECISION: 2000-029

Trenton Works Ltd. AND United Steelworkers of America, Local 1231

MacDonald, David J. - Arbitrator

Phil Best, for the Union

Ian Pickard, for the Employer

April 17, 2000

ISSUES:
Discipline and discharge - Grounds for - Absence from work 7:3100; Discipline and discharge - Grounds for - Refusal to obey instructions 7:3610, 7:3612.

CIRCUMSTANCES:
The Grievor laid off work with pain in his left arm and leg which he related to an injury suffered some two years before. He completed a report of accident for the WCB, and the Employer had no contact with him for the next eight months or so. At the end of that period, the Employer was informed by the WCB that the Grievor's problems were not related to the injury and that he was fit for light duties. From this point representatives of the Employer attempted to contact the Grievor to obtain information about his health and to advise him of his obligation to work with the Employer to return him to work. The Grievor did not comply with any directives, nor did he respond to the Employer's warnings of imminent discharge. The Employer's position is that the Grievor's actions constitute insubordination, and that, even aside from the insubordination, he is properly terminated because of his unauthorized absence from work. The Union's position is that the Employer carried on a campaign of harassment against the Grievor.

AWARD:
The Grievance fails. The directives of the Employer were given to the Grievor, they were clearly communicated, and the Grievor not only refused to comply, he very obviously went out of his way to avoid compliance. This is insubordination. He was also absent from work without providing evidence that his absence was bona fide. The penalty of discharge is appropriate and the manner in which the Employer imposed progressive discipline was correct.

DECISION: 2000-030

Swedwood Canada Ltd. AND United Brotherhood of Carpenters & Joiners of America, Local 2004

Ashley, Susan M. - Arbitrator

Raymond Mitchell, for the Union

John Plowman, for the Employer

May 19, 2000

ISSUES:
Management rights 4:2320, 5:0000; Vacancy - Standard in fulling 5:2520.

CIRCUMSTANCES:
This grievance concerns the Grievor's second unsuccessful application for the position of relief operator for a panel saw. The Union's position is that although the Grievor was the junior applicant, his experience at using the panel saw made him the only applicant qualified for the position. The Employer's position is that the Grievor's experience was only as a "D" level employee (Helper), and that the successful candidate's experience as a "C" level employee was of greater importance. In addition, the Employer found the Grievor to be unsuitable because of his immaturity, attitude, and inability to cooperate with others.

AWARD:
The Grievance fails. It is clear that the position in question requires a significant degree of communication and cooperation with others. The allegations concerning the Grievor's attitude were fairly specific, and not denied by the Grievor. The Union has not met their burden of proving that the Employer acted unfairly or unreasonably.

DECISION: 2000-031

Marine Atlantic Inc. AND National Automobile, Aerospace, Transportation & General Workers Union of Canada (CAW-Canada), Local 4285

Scaravelli, Nicoll M. - Arbitrator

D. Victor Tomizek, for the Union

John MacPherson, for the Employer

April 25, 2000

ISSUES:
Technological change - Collective agreement restrictions 5:2200, 6:2200.

CIRCUMSTANCES:
The Employer closed the ferry dining room in order to make the space into sleeping accommodations. The Union argues that the change deprived eight employees the opportunity to fill dining room positions during the summer months. It also deprived employees of the opportunity to bank time by working additional trips. The Employer's position is that the action was not a technological operational or organizational change as described in the Agreement; that such a change only applies to situations in the control of the Employer, which this change was not; that the changes in question involve only a normal reassignment of duties; and that the changes did not have an adverse effect on employees.

AWARD:
The Grievance fails. Although the Arbitrator finds that the closing of the dining room is an operational or organizational change, the Union has not shown that employees suffered any adverse effect as a result thereof.

DECISION: 2000-032

Highland Visions Society AND National Automobile, Aerospace, Transportation & General Workers Union of Canada (CAW-Canada), Local 4603

MacDonald, David J. - Arbitrator

Victor Tomiczek, for the Union

Ray Kuszelewski, for the Employer

April 14, 2000

ISSUES:
Discipline and discharge - Grounds for - Patient abuse 7:3430; Remedies - Types of remedy - Reinstatement 2:1470.

CIRCUMSTANCES:
The Grievor was accused by certain fellow employees of having abused a patient. The Employer conducted an investigation consisting of interviews of about 20 staff members. The Board of Directors based its dismissal of the Grievor upon the information gathered from these interviews. It is the position of the Employer that even if the Grievor's actions were non-culpable, the circumstances are sufficient to warrant dismissal, since the patient reacts so violently to her presence as to endanger his health; and since the Employer could be held responsible for any conduct of the Grievor found to be tortious. The basis of the argument is frustration of contract. The Union challenges the propriety of the investigation, pointing out that it was inconsistent in approach, proper records were not kept, and there is some indication that there was attempt to make the evidence suit the allegations in order to warrant dismissal.

AWARD:
The Grievance succeeds in part. The frustration of contract argument is inappropriate in this jurisdiction. The Arbitrator finds that the investigation was flawed in that information was not properly recorded nor maintained in an uncontaminated fashion. It is probable that in their concern for the patient, the Employer and some of the Grievor's fellow employees rushed to establish a cause that could be readily corrected -- by removal of the Grievor. The one witnessed incident that might be called abuse is more accurately characterised as a mishandling of the situation. Accordingly, the Arbitrator substitutes a one week suspension without pay for the penalty of dismissal, and retains jurisdiction to deal with implications of the award should the parties be unable to agree thereon.

DECISION: 2000-033

Canada Post Corp. AND Canadian Union of Postal Workers

Christie, Innis - Arbitrator

Carole Woodhall, George Nickerson, Mike Scot, for the Union

Jo Anne Harrington, D.T. Pottie, for the Employer

April 13, 2000

ISSUES:
Schedules 5:3100; Work assignment - Contracting out - Employees outside unit 5:1400.

CIRCUMSTANCES:
The Union grieves that the Employer has incorrectly transferred the bargaining unit work of unloading mail to the contract driver of the truck. In addition, the Employer failed to advise the Union of the resulting schedule change on a timely basis. The Employer's position is that the Article of Agreement on which the Union bases its grievance is not applicable here because unloading is not "internal processing of mail". Also, the work in question is not work normally preformed by members of the bargaining unit. In regard to the Employer's failure to hold meaningful consultations with the Union before a schedule change, the Employer argues that the Union is precluded from grieving this because it failed to grieve previous schedule changes.

AWARD:
The Grievance succeeds in part. The Arbitrator finds that while the work in question is "within corporate facilities", it is not work "normally, regularly and actually being performed by members of the bargaining unit." The three month gap in the contract driver's unloading practices, during which bargaining unit members carried out unloading, did not establishing this as bargaining unit work under the Agreement. The Arbitrator finds that the Employer did fail to carry out meaningful consultation with the Union when the driver resumed unloading and scheduling therefore was changed. The Arbitrator awards pay to the employee who would have worked the extra hour on the first two days of its discontinuance, and remains seized of the matter.

DECISION: 2000-034

Trentonworks Ltd. AND United Steelworkers of America, Local 1231

Kydd, William H. - Arbitrator

Cal Luedee, for the Union

John MacPherson, for the Employer

March 22, 2000

ISSUES:
Arbitrability - Individual contracts of employment 2:1210; Discipline and discharge - Grounds for - Absence from work 7:3100.

CIRCUMSTANCES:
The Grievor was terminated for breach of a "last chance agreement" guaranteeing that his chronic absenteeism would be corrected. The Employer argues that even if the agreement is found not to be valid, it was entitled to terminate the Grievor on the grounds of innocent absenteeism. The Union's position is that the last chance agreement is void because the Union did not sign the agreement as a party, and only the Union was legally entitled to contract with the Employer in regard to members of the bargaining unit. Further, the Union argues that the Grievor is suffering from a mental disability, and the agreement discriminated against him.

AWARD:
The Grievance fails. While it is true that the Employer had no right to enter into an individual contract with the Grievor, the Arbitrator finds that the Union was in fact a party to the last chance agreement, and that the Grievor did breach five of the six conditions of the agreement. The Arbitrator further finds that the Grievor was not suffering from a physical or mental disability protected under the Human Rights Act.

DECISION: 2000-035

Associated Freezers Corp. AND United Steelworkers of America, Local 1015

MacKeigan, Peter J. - Arbitrator

Bernie Campbell, for the Union

Kathryn Raymond, for the Employer

April 3, 2000

ISSUES:
Wages - Acting pay 8:1000, 8:1100.

CIRCUMSTANCES:
The Grievor worked for the Employer at various times as Office Clerk, Shift Janitor, Receiver, Warehouseman, and Receiver/Shipper. During the period of time in question, when the Grievor worked as Warehouseman or Receiver/Shipper, the Employer withheld the full amount of wages payable on the basis of the higher-paid positions. The Employer claims that this was done because the Grievor was working as Office Clerk on a probationary basis. The Union's position is that, according to the Agreement, when the Grievor was working at a higher-wage job, he was entitled to that amount on an hourly basis without having the difference in the wage amount between these classifications offset against the wage amount for hours worked in other lower classifications.

AWARD:
The Grievance is allowed. The Agreement is clear that when working in a higher position an employee is entitled to the higher rate of pay.

DECISION: 2000-036

Chignecto-Central Regional School Board AND Nova Scotia Teachers' Union (NSTU)

Veniot, Milton J. - Chair; MacPherson, Ronald; Sampson, Robert

Lorraine Lafferty, for the Union

Bruce T. MacIntosh, for the Employer

March 29, 2000

ISSUES:
Interest arbitration 1:0000.

CIRCUMSTANCES:
This an interest arbitration concerning a Local Professional Agreement. The Board has been asked to settle issues upon which Union and Employer have been unable to come to terms. The subjects at issue are: Management Rights, Professional Development Fund, Seniority and Term Service, Promotions and Contested Vacancies, Term Recall, Service Award/Death Benefit, and Class Size.

AWARD:
The Board made determinations on all issuec brought forward, and retained jurisdiction for a period of 40 days to deal with any matters of clarification that might arise.

DECISION: 2000-037

Halifax Regional Municipality AND Canadian Union of Public Employees (CUPE), Local 108

Darby, Peter E. - Arbitrator

Ronald A. Pink, for the Union

Scott Sterns (for the Grievors), Gregory I. North, for the Employer

March 13, 2000

ISSUES:
Seniority - Acquisition - Non-unit employees 6:1120.

CIRCUMSTANCES:
This is a grievance to determine the effect upon 16 members of the Union of their having left their positions with the Province as road maintenance staff, to work for the HRM when responsibility for a stretch of pavement passed from the Province to HRM. The HRM claims a neutral position on the issue; the dispute is between the Union and the Grievors. The position of the Grievors is that their period of employment was preserved unbroken by the transfer of responsibility from the Province to HRM; further, they argue that the HRM is a predecessor employer, and as such bound by the Agreement to allow them to bring their seniority with them from their previous employer. The Union's position is that seniority, as defined in the Agreement means seniority within the bargaining unit. The Grievors could only have brought their seniority with them if the Union had agreed to their doing so.

AWARD:
The Grievance is dismissed. The HRM was not a predecessor employer as intended by the Agreement. It is clear that the Union refused to allow the Grievors to bring their seniority with them in order to protect its long-time members, and that the Union had the right to do so.

DECISION: 2000-038

Northside Community Guest Home AND Canadian Union of Public Employees (CUPE), Local 1876

North, Gregory I. - Arbitrator

Barbara Kowalski, for the Union

Matthew Ryan, for the Employer

March 29, 2000

ISSUES:
Credibility 3:5100; Discipline and discharge - Grounds for - Patient abuse 7:3430.

CIRCUMSTANCES:
A fellow-employee reported having witnessed the Grievor's verbally abusing a resident. An investigation revealed that 3 other employees had witnessed similar incidents of abuse by the Grievor. It is the position of the Employer that abuse of residents, whether physical or verbal, is unacceptable and behaviour as described by the witnesses merits dismissal. The Grievor's position is that none of the incidents described occurred, and that her dismissal is a result of a conspiracy against her.

AWARD:
The Grievance is denied. The Grievor's denial is not believable against the accounts, by four different employees, of four similar incidents of abuse. The idea of a conspiracy is not credible, especially in light of the fact that an active investigation was required to elicit accounts of two of the incidents of abuse from two staff members.

DECISION: 2000-039

Nova Scotia (Transportation and Public Works) AND Canadian Union of Public Employees (CUPE), Local 1867

Veniot, Milton J. - Arbitrator

B.A. (Rocky) Jones, for the Union

Alex Ikejiani, for the Employer

May 3, 2000

ISSUES:
Interpretation - Aids to interpretation - Past practice 2:2220; Remedies - Types of remedy - Damages - Certainty of 2:1410; Seniority - Applications - Promotion, demotion and transfer 6:2100.

CIRCUMSTANCES:
The Grievance claims that the Agreement was breached when the position of Captain of a ferry was awarded to another CUPE member with less seniority. The Union also argues that the CUPE Agreement gives bargaining unit members certain rights to positions in an NSGEU bargaining unit. The Employer's position is that because the job competition in question was for a position in another bargaining unit there is no right under the CUPE Agreement to grieve.

AWARD:
The Grievance succeeds. Past practice supports the Union's interpretation of how vacancies in the Captain's position were handled. The two candidates being relatively equal as to qualifications and experience, the determining factor should have been seniority, where the Grievor had the advantage. The Employer is ordered to compensate the Grievor for wages lost from the time he should have been made Captain to the time he became Captain.

DECISION: 2000-040

Construction Management Bureau Ltd. AND International Brotherhood of Electrical Workers (IBEW), Local 625

MacKeigan, Peter J. - Arbitrator

Ronald Pink, for the Union

Greig Macleod, for the Employer

May 2, 2000

ISSUES:
Insurance and welfare plans - Payment of premiums 8:3310.

CIRCUMSTANCES:
This is a policy grievance in which the Employer refused to transfer funds from the Recreation Fund to the Health and Welfare Fund at the request of the Union. The Employer states that to do so would increase the total wage package when overtime is taken into account. The Union argues that this possibility can only occur in specific circumstances relating to apprenticeships, and that wording in the Agreement was changed to ensure that this problem will not happen.

AWARD:
The Grievance succeeds. The Employer is confusing the concepts of "total wage package" and "zero financial impact". The movement of funds as requested by the Union is permissible, and the Employer's refusal is a violation of the Agreement.

DECISION: 2000-041

Westin Nova Scotian Hotel AND Hotel Employees & Restaurant Employees International Union (HERE), Local 662

Kydd, William H. - Arbitrator

N/A, for the Union

N/A, for the Employer

Date: N/A

CIRCUMSTANCES:
The matter was settled with no written decision.

DECISION: 2000-042

Halifax County Regional Rehabilitation Centre AND Canadian Union of Public Employees (CUPE), Local 1028

Veniot, Milton J. - Arbitrator

N/A, for the Union

N/A, for the Employer

March 23, 2000

ISSUES:
Disciplinary penalties 7:4000, 7:4200.

CIRCUMSTANCES:
This arbitration concerned two disciplinary grievances; for a suspension and a termination. On the second day of hearing, the parties resolved the differences.

AWARD:
There is no award.

DECISION: 2000-043

Lynk Electric Ltd. AND International Brotherhood of Electrical Workers (IBEW), Local 1852

Kydd, William H. - Arbitrator

N/A, for the Union

N/A, for the Employer

Date: N/A

CIRCUMSTANCES:
The matter was settled with no written decision.

DECISION: 2000-044

Surette Battery AND International Brotherhood of Electrical Workers (IBEW)

Kydd, William H. - Arbitrator

N/A, for the Union

N/A, for the Employer

Date: N/A

CIRCUMSTANCES:
This matter was settled with no written decision.

DECISION: 2000-045

Trenton Works Ltd. AND United Steelworkers of America, Local 1231

MacDougall, R. Lorne - Arbitrator

N/A, for the Union

N/A, for the Employer

Date: N/A

CIRCUMSTANCES:
This matter was settled with no written decision.

DECISION: 2000-046

Trenton Works Ltd. AND United Steelworkers of America, Local 1231

MacDougall, R. Lorne - Arbitrator

N/A, for the Union

N/A, for the Employer

Date: N/A

CIRCUMSTANCES:
This matter was settled with no written decision.

DECISION: 2000-047

IWK Grace Health Centre AND National Automobile, Aerospace, Transportation & General Workers Union of Canada (CAW-Canada)

DeMont, Eric G. - Arbitrator

N/A, for the Union

N/A, for the Employer

Date: N/A

CIRCUMSTANCES:
This matter was settled with no written decision.

DECISION: 2000-048

Cape Breton Healthcare Complex AND National Automobile, Aerospace, Transportation & General Workers Union of Canada (CAW-Canada), Local 4600

Ashley, Susan M. - Arbitrator

Victor Tomiczek, for the Union

Ray W. Kuszelewski, for the Employer

May 1, 2000

ISSUES:
Good faith - Vacancies, transfers, promotions 5:2300; Medical opinion - Ability to perform 7:3220.

CIRCUMSTANCES:
The Grievor is a lab assistant who had to be relieved of the duty of blood collection, which amounted to about half his time, due to mental stress in connection with that portion of his job. According to the Union, the Employer has failed to accommodate the Grievor's disability fully, resulting in loss of wages and benefits to the Grievor. The Employer insists that it has made all reasonable effort to accommodate and any further action would amount to creating a position especially for him.

AWARD:
The Grievance succeeds in part. The Arbitrator finds that the Employer's duty to accommodate to the point of undue hardship was by no means met. Therefore, the Arbitrator orders that the Grievor be compensated for lost wages until such time as the duty is met. The Arbitrator retains jurisdiction to deal with the question of whether further steps reach the undue hardship standard after the parties have had reasonable opportunity to resolve the problem.

DECISION: 2000-049

Black & McDonald Ltd. AND International Brotherhood of Electrical Workers (IBEW), Local 625

MacDonald, David J. - Arbitrator

Ronald A. Pink, for the Union

Malcolm D. Boyle, for the Employer

May 29, 2000

ISSUES:
Contracting out 5:0000, 5:1300.

CIRCUMSTANCES:
The Union alleges that the Employer breached the Agreement by contracting out electrical work to a non-unionized sub-contractor. The Employer's position is that the work in question does not fall within the definition of work of either the "electrical construction trade" or the "electrical trade". Furthermore, the Employer claims that since it could not do the work itself, the work does not fall under the article cited by the Union.

AWARD:
The Grievance is dismissed. The work of stress relieving having been determined to be outside the electrical trade, there is no breach of the Agreement.

DECISION: 2000-050

Cape Breton Healthcare Complex AND National Automobile, Aerospace, Transportation & General Workers Union of Canada (CAW-Canada), Local 4600

MacDonald, David J. - Arbitrator

Victor Tomiczek, for the Union

Ray Kuszelewski, for the Employer

June 8, 2000

ISSUES:
Discipline and discharge - Grounds for - Patient abuse 7:3430; Discipline and discharge - Burden

of proof 7:2300.

CIRCUMSTANCES:
A resident accused the Grievor of bathing her in very hot water and leaving her alone in the tub room. After an investigation, the Employer disciplined the Grievor by suspending her without pay and placing a written reprimand in her file such that any future accusation would result in immediate termination. The Employer's position is that patient abuse is a very serious matter and all accusations must be taken seriously.

AWARD:
The Grievance succeeds. Given the inconsistency of the resident's accounts of the incident, the period of time that elapsed between the original complaint and the investigation, the Grievor's documented behaviour evincing concern for the resident's health and welfare within minutes of the alleged incident, and actions on the part of the Employer compromising the integrity of the investigation, the Arbitrator finds that the Employer has not discharged the burden of establishing just and reasonable cause for discipline. The suspension is to be rescinded, all reference thereto removed from the Grievor's file, and the Grievor shall be compensated in full for all wages and benefits lost due to the suspension.

DECISION: 2000-051

Children's Aid Society AND Canadian Union of Public Employees (CUPE), Local 2837

Christie, Innis - Arbitrator

N/A, for the Union

N/A, for the Employer

Date: N/A

CIRCUMSTANCES:
This matter was settled with no written decision.

DECISION: 2000-052

Kenmount Ford Sales (1981) Ltd. AND National Automobile, Aerospace, Transportation & General Workers Union of Canada (CAW-Canada), Local 4506, Unit 3

Scaravelli, Nicoll M. - Arbitrator

Lynn Pollack, for the Union

Donald Matheson, for the Employer

May 31, 2000

ISSUES:
Successor employer 2:3110; Vacation - Computation of vacation and vacation pay - Period of service 8:3220.

CIRCUMSTANCES:
The Grievor claims that he is owed four weeks' vacation pay. He claims that he did not take his first year's vacation until his second year of employment, and from that time every vacation he took was his vacation from the previous year. This employer is a second successor to the Grievor's original employer, and there are no records to substantiate the Grievor's claim. The Employer's position is that all vacation is taken or paid in the current year, as described in the Agreement; the Employer's records are consistent with this claim.

AWARD:
The Grievance fails. The Employer has followed the applicable provisions of the Agreement. The Arbitrator orders the Employer to pay only outstanding vacation pay for the present year based upon the Grievor's years of service.

DECISION: 2000-053

Delta Sydney AND National Automobile, Aerospace, Transportation & General Workers Union of Canada (CAW-Canada), Local 4624

MacDonald, David J. - Arbitrator

Lynn Pollack, for the Union

Nancy F. Barteaux, for the Employer

June 20, 2000

ISSUES:

Discipline and discharge - Grounds for - Refusal to obey instructions 7:3610, 1z 7:3612.

CIRCUMSTANCES:

The Grievors were waitresses. On the night in question, they were working in the dining room and as room service waiters. The Manager instructed the dining room hostess to tell the Grievors to clear the room service trays from the hallways. When he found that this had not been done, the hostess told him that the Grievors had refused to do it. The Grievors were given written warnings. It is the Employer's position that the order was given to the Grievors, that they understood that it came from the manager, and that they failed to carry out his instructions; this is insubordination as defined in the Agreement, and it merits discipline.

AWARD:

The Grievance succeeds. The Grievors did not refuse to carry out the order; it was their understanding that the task would be done by the hostess. While the Arbitrator does not condone the complaining and "venting" that led to the hostess' offer, he cannot find that it constitutes insubordination. The warnings are ordered to be removed from the Grievors' files.

DECISION: 2000-054

Amherst (Town) AND Amherst Police Assn.

North, Gregory I. - Arbitrator

David W. Fisher, for the Union

Matthew J. McPherson, Joanne Bailly, for the Employer

June 21, 2000

ISSUES:
Performance appraisals 7:4210; Union - Activity and business 9:1400.

CIRCUMSTANCES:
The Grievor, a constable, had been informed that he would be promoted to Acting Detective Sergeant on the next shift rotation. When the rotation schedule was announced, he found that the anticipated promotion had not occurred. He confronted his Chief angrily and publicly and stated that he would grieve the schedule on his own behalf and that of two other employees. The Chief wrote up the incident as a "Noteworthy Event", which he placed in the Grievor's file. The Union's position is that the Noteworthy Event was disciplinary in nature, and as a disciplinary sanction it is contrary to provisions of the Police Act. Furthermore, the Union states that the situation arose while the Grievor was discharging duties as a Union representative, and performance-related discipline or evaluation cannot arise when an individual is engaged in duties as a Union official.

AWARD:
The Grievance is dismissed. The Arbitrator finds that the Noteworthy Event does not constitute disciplinary action. The Arbitrator further finds that the Grievor was acting as an individual employee when he confronted the Chief, not as a representative of the Union.

DECISION: 2000-055

Ben's Ltd. AND Bakery, Confectionery, Tobacco Workers & Grain Millers International Union (BCT), Local 446

North, Gregory I. - Arbitrator

Rene Quigley, Sandra Whitehead, for the Union

Lisa Gallivan, Karin McCaskill, for the Employer

June 26, 2000

ISSUES:
Management rights 5:0000.

CIRCUMSTANCES:
The Grievor operates a mixer in the Employer's bakery. Recently, the Employer instructed the Grievor to use two mixers at a time, instead of one. The Union, for the Grievor, argues that this constitutes an order for the Grievor to work outside his classification. The Employer's position is that this is a legitimate re- organization of its workforce for business reasons, and it does not contravene the provisions of the Agreement.

AWARD:
The Grievance is dismissed. The Grievor was asked to carry out duties normally performed by a Mixer Operator. The Employer's change in production method was a legitimate exercise of its right to produce its product in a cost- effective and efficient manner.

DECISION: 2000-056

Annapolis Valley Regional School Board AND Nova Scotia Teachers' Union (NSTU)

Kydd, William H. - Arbitrator

Lorraine Lafferty, for the Union

Leroy Lenethen, for the Employer

November 1, 1999

ISSUES:
Estoppel - Procedural irregularities not objected to 2:3130; Time-limits - Waiver of 2:3130.

CIRCUMSTANCES:
This concerns a preliminary objection that a grievance is not arbitrable because of alleged breach of mandatory time limits in the grievance procedure in the Agreement. Representatives for the Grievor and the Employer spent considerable time, well beyond the mandatory time limits prescribed in the Agreement, attempting to resolve their disagreement. By the time the Union put an end to the negotiations and insisted on bringing the issue to a grievance, the time- limits had expired.

AWARD:
The Grievance is arbitrable. The whole course of conduct adopted by the parties was an informal procedure including waiving time-limits as they arose in order to accommodate discussions. Both Union and Employer knew or ought to have known that this conduct would be relied upon by the other. The Employer is estopped from relying on the time-limit.

DECISION: 2000-057

Cape Breton Victoria Regional School Board AND Canadian Union of Public Employees (CUPE), Local 5050

Veniot, Milton J. - Chair; McDougall, Donald H.; Gallant, Linda

Barbara Kowalski, for the Union

Eric B. Durnford, for the Employer

June 8, 2000

ISSUES:

Discipline and discharge - Grounds for - Refusal to obey instructions 7:3610, 7:3612; Remedies - Substitution of lesser penalty7:4000, 7:4100.

CIRCUMSTANCES:

The Grievor, a schoolbus driver, was disciplined for insubordination during an inservice meeting. The Union's position is that the Grievor did not intend to be insubordinate and that he should not have been disciplined. The Employer's position is that the Grievor repeatedly disobeyed direct orders from his supervisor to return to his seat and stop speaking to the assembly, and his behaviour was confrontational and aggressive. The Grievor received five days' unpaid suspension (only four of which he served) and as a condition of return to work was required to tender his supervisor a written apology.

AWARD:

The Grievance succeeds in part. The Board finds that there was just cause for discipline. On the question of discipline, the Board finds that the requirement for an apology, under the present circumstances, put the Grievor in an untenable position. Accordingly, it has ordered that the letter of apology be removed from the Grievor's file and the letter of discipline amended accordingly. With respect to the suspension, the Board finds that there are mitigating factors in the Grievor's long service without previous disciplinary record, and the fact that the issues he attempted to raise during the inservice were legitimate matters of concern. The Board substitutes one day's suspension and a written warning.

DISSENT:

(McDougall) The factual findings on the Grievor's conduct do not lead to a reduction in the suspension. The Grievor's behaviour was aggressive and challenging toward his supervisor, he deliberately used a surprise attack at the inservice to bring forward the issues of concern, his behaviour at the hearing indicated that he continues to be defiant toward his supervisors, he does not demonstrate remorse for his misbehaviour, and his version of the event is so little credible as to show that the Grievor has attempted to mislead the Board. The suspension of four days should stand.

DECISION: 2000-058

Dalhousie University AND Dalhousie Faculty Assn.

Thistle, W. Wayne - Arbitrator

Raymond F. Larkin, for the Union

Eric Durnford, for the Employer

March 23, 2000

ISSUES:
Bias 1:5210, 3:1100.

CIRCUMSTANCES:
This Arbitration deals with a preliminary objection of apprehension of bias.

AWARD:
The Arbitrator voluntarily withdraws from the case.

DECISION: 2000-059

Quentin's Roofing Ltd. AND Sheet Metal Workers International Assn., Local 56

MacDougall, R. Lorne - Arbitrator

David Roberts, Jack Wall, Ken Jones, for the Union

John MacNeil, for the Employer

July 13, 2000

ISSUES:
Union - Compliance with Collective Agreement - Check off 9:1200.

CIRCUMSTANCES:
Both parties agreed that the Employer owes the Union certain amounts for dues and benefits.

AWARD:
The decision confirms the agreement between the parties.

DECISION: 2000-060

Children's Aid Society of Pictou County AND Canadian Union of Public Employees (CUPE), Local 3928

Veniot, Milton J. - Arbitrator

N/A, for the Union

N/A, for the Employer

July 6, 2000

CIRCUMSTANCES:
The parties settled the Grievance after the first day of hearings.

AWARD:
There is no award.

DECISION: 2000-061

Dartmouth Marine Slips AND Industrial Union of Marine & Shipbuilding Workers of Canada, Local 13

North, Gregory I. - Arbitrator

Ronal Pizzo, for the Union

David Thomson, for the Employer

August 25, 2000

ISSUES:
Time-limits - Waiver of 2:3130.

CIRCUMSTANCES:
This Arbitration is to address a preliminary objection. The Employer states that the Union has exceeded the mandatory time-limit provided in the Agreement, and therefore the Grievance has been abandoned. The Union's position is that it has not exceeded the time-limit.

AWARD:
The preliminary objection is dismissed and the case will proceed. The time- limit has not been breached; in the alternative, the Arbitrator finds that the Employer has waived any right to raise the objection due to its failure to object on a timely basis.

DECISION: 2000-062

Cape Breton-Victoria Regional School Board AND Nova Scotia Teachers' Union (NSTU)

Ashley, Susan M. - Arbitrator

Lorraine Lafferty, for the Union

Robert Sampson, for the Employer

July 13, 2000

ISSUES:
Promotion, demotion and transfer - Remedies 6:4100; Skill and ability - Criteria of ability and qualifications 6:3300.

CIRCUMSTANCES:
The Grievor applied for positions as school principal twice within the space of a month. This Grievance concerns the second competition. The Union's position is that the Employer failed to properly and reasonably evaluate the Grievor's professional qualifications, particularly his ability, as required by the Agreement. The Union asks that the Arbitrator place the Grievor in the position, since he would have been the successful candidate had his ability been appropriately evaluated.

AWARD:
The Grievance succeeds in part. The Arbitrator allows the Grievance, finding that by changing the scores for ability, the Employer improperly lowered the Grievor's score and raised that of the successful candidate. However, the Arbitrator declines to place the Grievor in the position, since two other candidates have an interest in the outcome of this arbitration. Accordingly, the Employer is ordered to re-evaluate all the candidates in a fresh process conducted by a different panel, and correctly weighting the ability factor.

DECISION: 2000-064

Nova Scotia (Community Services) AND Nova Scotia Government Employees Union (NSGEU)

North, Gregory I. - Arbitrator

Raymond Larkin, Nicolle Arsenault (article clerk), Jim Guild (Employee Relations Officer), for the Union

Dale Darling, Sheila Landry, for the Employer

March 15, 2000

ISSUES:
Interpretation - Intention of the parties 4:2100; Statutory holidays 8:3100.

CIRCUMSTANCES:
The Grievor worked a call-in shift on a Good Friday. It was her understanding that employees working statutory holidays were entitled to a compensating day off, but she was informed that she was not so entitled. The position of the Employer is that to allow a day off in lieu in addition to other compensation would be pyramiding of benefits. The Union's position is that the Employer attempted to change past practice by eliminating the time off in lieu arrangement, but the change was not approved by the Union and the Employer is not entitled to carry it out.

AWARD:
The Grievance succeeds. The Agreement clearly indicates that benefits provided in certain provisions are "in addition to" benefits provided in the Master Agreement. The parties have agreed that additional benefits accrue to members of the Grievor's group to compensate for their not receiving overtime at premium rates. The Grievor is to be awarded paid time off as specified.

DECISION: 2000-065

Bowater Mersey Paper Co. Ltd. AND Communication, Energy & Paperworkers Union of Canada (CEP), Local 141

Archibald, Bruce P. - Arbitrator

Ron Pink, Bettina Quistgaard, for the Union

Karin McCaskill, for the Employer

July 14, 2000

ISSUES:
Contracting out 5:1300.

CIRCUMSTANCES:
The Grievance has to do with the Employer's contracting out of two major repair jobs in the plant. The Union's position is that both of these jobs could have been done by employees with plant equipment, and that therefore the Employer breached the Agreement by contracting them out. The Employer claims that one of the jobs was new construction, not maintenance, and therefore not subject to the clause on contracting out, and that the other was emergency work which could not have been done by present staff given pressures of time and other commitments.

AWARD:
The Grievance succeeds in part. The Arbitrator finds that the first job was not new construction and should have been done by employees. The second, however, was properly contracted out because of its emergency nature. The Arbitrator retains jurisdiction to deal with remedies which the parties are unable to settle by mutual agreement.

DECISION: 2000-066

Trentonworks Ltd. AND United Steelworkers of America, Local 1231

Archibald, Bruce P. - Arbitrator

John Kingston, Cal Luedee, for the Union

John C. MacPherson, for the Employer

July 18, 2000

ISSUES:
Lay-off - Burden of proof 3:2415; Lay-off - Disability 7:3200.

CIRCUMSTANCES:
The Grievor applied to the Employer to return to work after an absence of ten years. According to the Union, the Grievor has been on disability during this period, and is eligible to return now that his health permits. The Employer's position is that the Grievor was laid off for lack of work and, having failed to reply to the Employer's query as to whether he wished to remain on the seniority list, was later deemed to be terminated. Furthermore, the Employer argues that the Union is out of time on this Grievance.

AWARD:
The Grievance succeeds. The Grievor and the Union acted within a reasonable time period after discovering that the Employer had removed the Grievor from the seniority list. The Arbitrator is satisfied that the Grievor was indeed laid off not for lack of work, but due to a disability. He may return to work when he has demonstrated to the Employer that he is fit for suitable employment.

DECISION: 2000-067

Villa St. Joseph du Lac AND Canadian Union of Public Employees (CUPE), Local 3064

Slone, Eric K. - Arbitrator

Laurie Hitchins, for the Union

Noella Martin, for the Employer

July 25, 2000

ISSUES:
Innocent absenteeism 7:3210; Insurance and welfare plans - Entitlement to benefits 8:3320.

CIRCUMSTANCES:
The Grievor was off work receiving long term disability benefits. The Employer terminated her upon being informed that she would no longer be eligible for benefits, and that her medical state would not permit her to return to work. As a result, she lost access to the group medical and drug plan, of which she made extensive use. The Union's position is that the Employer cannot dismiss the Grievor and cut her off these benefits while she is dependent upon them. The Union also claims that the Grievor is entitled to a lump sum paid to all full-time member of the bargaining unit upon the coming into force of a new Collective Agreement. The Employer argues that two of the Grievances are flawed because they were filed too late. It also claims a clear right to terminate for innocent absenteeism.

AWARD:
All three Grievances are dismissed. The Employer had the right to terminate for innocent absenteeism. The Employer is correct that the second Grievance, protesting the Employer's dropping the Grievor from the group health plan, is untimely; however, even if the Grievance had been arbitrable, it would not have succeeded on its merits. On the third issue, since the Grievor had been discharged well before the distribution of the lump sum, and since she was not a full-time employee anyway, she has no entitlement to payment of the lump sum.

DECISION: 2000-068

ABT Building Products Canada Ltd. (Canexel Hardboard Division) AND Communication, Energy & Paperworkers Union of Canada (CEP), Local 434

Christie, Innis - Arbitrator

Ronald A. Pink, Dennis Grant, for the Union

David Clark, Stephanie Thompson, for the Employer

July 23, 2000

ISSUES:
Arbitrability - Statutory requirement 2:1100; Discipline and discharge - Grounds for - Abuse of leave of absence 7:3120; Remedies - Types of remedy - Damages - Loss of reputation 2:1410.

CIRCUMSTANCES:
The Grievor was suspended for five days for abuse of sick leave. During the period of suspension, the Employer called meetings to inform other employees in the Grievor's section of the reasons for

his being disciplined. The Union's position is that the Grievor was incapacitated for work, that he properly informed the Employer of his absence, and that the Employer slandered him and caused him emotional distress by publishing false statements accusing him of dishonesty. The Employer's position is that it was justified in suspecting that the Grievor was abusing sick leave, and that it had good reason to inform the other employees of the reasons for his discipline. It also argues that the Arbitrator lacks jurisdiction to deal with the question of slander.

AWARD:
The Grievance succeeds in part. The Arbitrator is satisfied that the activities the Grievor engaged in were not inconsistent with the incapacity he claimed, nor was there anything actionable in the Grievor's turning down the Employer's offer of light duties. In light of its suspicions, the reasonable course of action would have been for the Employer to require further information from the Grievor's doctor, not to proceed to discipline. The Arbitrator finds it has jurisdiction to deal with the issue of defamation and concludes that while the statements made against the Grievor were defamatory, they were not shown to be malicious. The Employer is ordered to provide the Grievor with a letter of apology to be included in his file and, if the Grievor wishes, to be published to all the employees in the Grievor's section.

DECISION: 2000-069

Cape Breton Healthcare Complex AND Nova Scotia Nurses' Union (NSNU)

Ashley, Susan M. - Arbitrator

Leanne MacMillan, for the Union

Robert Dunn, for the Employer

July 27, 2000

ISSUES:
Trial, training period 6:3230.

CIRCUMSTANCES:
The Grievor was promoted to the position of Clinic Nurse in the mother-baby clinic. During the trial period several incidents occurred to convince her supervisors that she lacked enthusiasm for the new philosophy of mother-baby care adopted by the system. They also found her argumentative and resistant to changes in her position. Four days after her evaluation, she was removed from the position and returned to her former position. The Union's position is that the Grievor was not given adequate notification that her performance was unacceptable and opportunity for her to correct it. Furthermore, the Union states that there is no evidence that the Grievor was opposed to the Employer's philosophy of mother-baby care. The Employer's position is that it is entitled to remove

a person for unsuitability during the trial period without bearing the onus of proving that they had grounds.

AWARD:
The Grievance succeeds. The Arbitrator finds that there are several problems with the Grievor's removal from this position. As the Union noted, the Grievor was not given opportunity to correct the behaviour to which the Employer objected. The incidents used by the Employer to indicate lack of commitment appear to the Arbitrator to be more indicative of the Grievor's frustration with workload problems and the pace of change. The requirements of the job actually changed during the Grievor's period of employment and she was not given adequate time to adjust to the changes. The Grievor is ordered reinstated for an adequate trial period to be determined by the parties. The Arbitrator retains jurisdiction to determine the matter if the parties cannot agree.

DECISION: 2000-070

EASCO Electric Ltd. AND International Brotherhood of Electrical Workers (IBEW), Local 625

DeMont, Eric G. - Arbitrator

Gordon N. Forsythe, for the Union

David A. Mombourquette, for the Employer

August 17, 2000

ISSUES:
Interpretation - Words and phrases - Jobs and classifications - Job 5:2000.

CIRCUMSTANCES:
The Employer grieves the Union's refusal to issue a referral slip for the person selected by the Employer to perform electrical work. The Union's position is that this work is a part of a job worth more than $1,000,000, and consequently it is up to the Union to name the person who will do this work. The Employer's position is that this job is separate from the other contract between the Union and the Employer, and the cost of this job will be only $50,000, which entitles the Employer to "name hire" an electrician.

AWARD:
The Grievance fails. The Arbitrator finds that the two contracts in question are so interrelated that both contracts constitute a single job under the terms of the Agreement.

DECISION: 2000-071

Kimberly-Clark Nova Scotia AND Communication, Energy & Paperworkers Union of Canada (CEP), Local 440

Archibald, Bruce P. - Arbitrator

Raymond F. Larkin, for the Union

Eric B. Durnford, for the Employer

August 15, 2000

ISSUES:
Bereavement leave 8:3510; Interpretation - Aids to interpretation - Statutes 4:2230.

CIRCUMSTANCES:
The Grievor applied for and was denied bereavement leave when the mother of his common-law spouse died. The Union's position is that the Employer behaved in a discriminatory manner in denying leave. The Employer's position is that the Agreement clearly details the relatives whose death entitles an employee to bereavement leave, and the mother of a common-law spouse does not qualify.

AWARD:
The Grievance succeeds. The Employer's actions in denying bereavement leave to the Grievor constitute a violation of sections 3 and 5 of the Nova Scotia Human Rights Act, which are treated as part of the Agreement pursuant to section 43(1)(e) of the Trade Union Act. The Grievor is entitled to have a lieu day credited to him to replace the one he took for bereavement leave, and must be paid for the day off without pay he took for the same purpose. The Arbitrator retains jurisdiction in the event that the parties cannot agree on the remedy.

DECISION: 2000-072

National Gypsum (Canada) Ltd. AND International Union of Operating Engineers (IUOE), Local 721 & 721B

Archibald, Bruce P. - Arbitrator

Gordon N. Forsyth, for the Union

Terry Roane, for the Employer

August 15, 2000

ISSUES:
Wages - Rates for new and revised classifications 5:2440, 8:1000.

CIRCUMSTANCES:
This is a policy grievance to determine the appropriate wage rate for a new classification created by the Employer during a reorganization of the workplace.

AWARD:
The Arbitrator determined the pay structure and ordered the Employer to compensate the incumbents at the relevant rates for the period from the inception of the new classification if it has not already done so. The Arbitrator retains jurisdiction to decide upon matters which cannot be settled by the parties.

SEE ALSO:
99-021

DECISION: 2000-073

Cape Breton Regional Municipality AND Canadian Union of Public Employees (CUPE), Local 759

North, Gregory I. - Arbitrator

Dan MacLean, for the Union

Glenn F. Gouthro, for the Employer

August 22, 2000

ISSUES:
Seniority - Applications - Bumping 6:2330, 6:2340.

CIRCUMSTANCES:
The Employer is alleged to have refused bumping rights to Union members when it allowed only one member (who had a 4th Class Stationary Engineers Certificate) to bump when faced with lay-off. The Union's position is that many of the duties being performed by Assistant Facilities Attendants are labour intensive, and that senior labour qualified employees should be entitled to bump into those jobs, notwithstanding the Employer's requirement that Attendants must have a certificate. The Employer's position is that the Union is attempting to sanction the right of an employee to bump into only a part of another job. The requirement that an Assistant Facilities Attendant have a certificate is reasonable, it was established in good faith, and bears a clear relationship to the job functions being carried out.

AWARD:
The grievance fails. The Union's real contention is that the Employer has hired too many Assistant Facilities Attendants; according to the Union, the Employer should be hiring more Labourers. However, that issue arises at the time of job posting, and that is when it ought to be addressed. The issue at hand is the lay- off and consequent bumping. The one employee who had the required certification and seniority was granted his bumping rights. The Employer committed no breach of the Agreement with respect to bumping.

DECISION: 2000-074

Canada Post Corp. AND Canadian Union of Postal Workers

Christie, Innis - Arbitrator

Ed Johnson, Wayne Mundle, Carole Woodhall, Kevin Buckland, for the Union

Terry Roane, Fitzroy Eddy, Tim Cole, for the Employer

August 28, 2000

ISSUES:
Discipline and discharge - Grounds for - Untrustworthiness 7:3330; Remedies - Types of remedy - Reinstatement 2:1470.

CIRCUMSTANCES:
The Grievor was suspended, then terminated for stealing taxi chits for his own use. The Union claims that discharge was excessive in this case, considering the personal stresses on the Grievor at the time, and the Grievor's previous good record. The Union also grieves that the suspension was

imposed without written notice as required by the Agreement. The Employer argues that the Grievor's act is a breach of trust such that the Employer-Employee relationship is broken beyond repair.

AWARD:
The grievance succeeds. The Arbitrator finds that discharge was excessive, and substitutes a suspension equal to the time the Grievor has been terminated. The Arbitrator also finds that the Employer incorrectly failed to give written notice of the reason the discipline was imposed. The suspension is null, and the Employer is ordered to compensate the Grievor for all lost rights, earnings, and benefits resulting from his suspension.

DECISION: 2000-075

Georgia Pacific Corp. AND International Union of Operating Engineers (IUOE), Local 721B

Kydd, William H. - Arbitrator

Ray Larkin, for the Union

Jack Graham, for the Employer

September 21, 2000

ISSUES:
Management rights 4:2320, 5:0000; Seniority - Applications 6:2000.

CIRCUMSTANCES:
The Grievor worked principally as a truck driver and occasionally as a bulldozer operator. He grieves that on one shift, when he should have been assigned to operate the bulldozer, an employee with less seniority was assigned to that position instead. The Union's position is that the Grievor, as the senior employee on the shift capable of operating the bulldozer, should have been the employee assigned to the bulldozer. The Employer's position is that the employee assigned to the bulldozer had more experience and was the more suitable choice for that reason.

AWARD:
The grievance fails. The Employer has the right to assign employees to different tasks substantially within their classification.

DECISION: 2000-076

Halifax Regional Municipality AND Nova Scotia Union of Public Employees (NSUPE), Local 13

DeMont, Eric G. - Arbitrator

Ron Stockton, for the Union

Mary Ellen Donovan, for the Employer

September 15, 2000

ISSUES:
Insurance and welfare plans - Incorporation into collective agreement 8:3322.

CIRCUMSTANCES:
By the terms of Agreement the Employer was required to provide a medical plan providing "as much coverage and as good coverage as the best plan in effect for any member of the bargaining unit on the date of signing the collective agreement". The Union argues that this means that the Employer must provide a plan incorporating the best clauses from each of the five Agreements in force prior to amalgamation. The Employer's position is that it must determine the best of the five plans and provide a new plan that has at least as much coverage and as good coverage as the best prior to amalgamation. This grievance was the result of the discovery that the new plan, as devised by the Employer and accepted by the Union, no longer pays for non-prescription medications paid under a previous plan.

AWARD:
The grievance fails. Neither party insisted upon negotiating a medical plan following either of their interpretations of the Agreement. The Employer provided a plan after discussions and negotiations with the Union. The Union did not insist on the Employer's compliance with the Agreement, and is estopped from objecting to the plan by its position of compliance during negotiations.

DECISION: 2000-077

Trenton Works Ltd. AND United Steelworkers of America, Local 1231

Archibald, Bruce P. - Arbitrator

Phil Best, for the Union

Ian Pickard, Nancy Barteau, for the Employer

August 28, 2000

ISSUES:
Disciplinary penalties - Culminating incident 7:4310; Disciplinary penalties - Progressive discipline 7:4422.

CIRCUMSTANCES:
The Grievor was reported to have assaulted an employee who attempted to expel him from a restricted area. Given the seriousness of this incident and the Grievor's previous disciplinary history, he was terminated. At issue are: the extent to which the Grievor's medical conditions may have affected his behavior, and the extent to which the Employer ought to have known about these conditions and taken them into consideration when making the decision to terminate. The Union's position is that the Grievor was defending himself against assault by the other employee, that his previous offenses did not involve violent behavior, and that the incident which resulted in termination should be regarded as an isolated aberration.

AWARD:
The grievance fails. The Arbitrator finds that the termination was just and reasonable in light of the Grievor's conduct and disciplinary record. The Employer used corrective, progressive discipline properly, and in accordance with the Agreement. In the hope that the Grievor may undergo rehabilitation and be successful with another employer, the Arbitrator has removed the Grievor's name from the award.

DECISION: 2000-078

Dalhousie University AND International Brotherhood of Electrical Workers (IBEW), Local 625

Slone, Eric K. - Arbitrator

Gordon Forsyth, for the Union

Malcolm Boyle, for the Employer

September 1, 2000

ISSUES:
Contracting out 5:0000, 5:1300; Retroactivity 4:1610.

CIRCUMSTANCES:
This is a policy grievance. The Employer accepted a bid for electrical work from a non-union subcontractor while a certification application was pending. The Labour Board, in response to

submissions by the Employer on the date of certification, provided a certification date of May 30, 2000. Upon that date, the Employer became bound by the Collective Agreement, which contains union security provisions, including an article on subcontracting which binds the Employer to hire only union subcontractors. The Union's position is that since May 30, the Employer has been in violation of the union security provisions of the Agreement, and must pay damages to the Union. The Employer's position is that the clause on subcontracting does not apply because the contract predates the Agreement. Furthermore, it claims that the subcontracted electrical work would not have been done by in-house workers anyway.

AWARD:
The grievance succeeds. To give effect to the Employer's submissions would undermine the integrity of this Agreement, and would tend to legitimate devices to circumvent the operation of the article on subcontracting in cases where certification is under consideration. The Employer cannot complain that it was taken by surprise in its dilemma, since it was notified of the application for certification, and warned before it entered into a contract with a non-union subcontractor that such a contract would put it in violation of the Agreement. Having chosen to enter into the contract, and having chosen not to extricate itself, it must pay damages to the Union. The Arbitrator orders the parties to agree on the damages to be paid, and retains jurisdiction to decide the issue if they cannot come to a conclusion.

DECISION: 2000-079

Construction Management Bureau Ltd. AND International Brotherhood of Electrical Workers (IBEW), Local 625

Ashley, Susan M. - Arbitrator

Ronald Pink, for the Union

David Mombourquette, for the Employer

September 7, 2000

ISSUES:
Contracts of employment 2:1200, 2:1210.

CIRCUMSTANCES:
This is a policy grievance. The Employer grieves that the Union's proposed Hiring Incentive Programme violates the Agreement. The Employer's position is that the Programme undermines the Employer's position as the bargaining agent for all unionized electrical contractors on mainland Nova Scotia, and that the Programme would improperly introduce individual bargaining. As well, the Employer argues that introducing side agreements between the Union and contractors would

disturb the present "level playing field", adding an element of unfair competition. The Employer also notes that the Programme constitutes "stabilization", which is forbidden under the Agreement. The Employer protests that the Programme is an attempt by the Union to get through the back door what it could not get through the front. The Union's position is that there is no violation because the Programme is not a "term or condition of employment" in the meaning of the Agreement. In the alternative, the Union argues that the Programme is collateral to the Agreement; it does not constitute stabilization as defined in the Agreement.

AWARD:
The grievance succeeds. The Arbitrator finds that the proposed Programme constitutes a condition of employment which is different from that negotiated by the parties. It is not collateral to the Agreement; procedures intended to accomplish the same end were negotiated by the parties and the results appear in the Agreement. Thus, these fields are occupied and can only be changed through negotiation of the parties.

DECISION: 2000-080

Delta Sydney AND National Automobile, Aerospace, Transportation & General Workers Union of Canada (CAW-Canada), Local 4624

Veniot, Milton J. - Arbitrator

Lynn Pollack, for the Union

Nancy F. Barteaux, for the Employer

July 6, 2000

ISSUES:
Seniority - Applications - Promotion, demotion and transfer 6:2000, 6:2100.

CIRCUMSTANCES:
The Grievor alleged breaches of seniority and promotion articles of the Agreement.

AWARD:
There is no award. The grievance was withdrawn part way through the first day of the hearing.

DECISION: 2000-081

Canadian Blood Services AND Nova Scotia Union of Public Employees (NSUPE), Local 12

Outhouse, S. Bruce - Arbitrator

Ron Stockton, for the Union

Ross Langley, for the Employer

September 27, 2000

ISSUES:
Interpretation - Aids to interpretation - Dictionaries 4:2210; Interpretation - Aids to interpretation - Past practice 2:2220; Rest breaks 8:3700.

CIRCUMSTANCES:
This is a policy grievance. The Employer changed its policy on rest breaks for staff in mobile blood donor clinics so that breaks could no longer be taken during clinic hours. Instead, breaks are only allowed during the time after set-up and before the clinic opens, or after the clinic closes. The Union's position is that the Agreement specifies that staff are entitled to a break during each "session", and the term session is equivalent to clinic. Therefore, staff are entitled to a break during the clinic. The Employer's is that "session" is not synonymous with "clinic"; if it were, staff not working at clinics would not be entitled to rest breaks. Alternatively, if the Union's interpretation is accepted, the Employer argues that a clinic involves all the hours during which donors are processed, not only scheduled hours, and that consequently, management should have the flexibility to schedule breaks for as long as the clinic is operation, including after the closing time has passed.

AWARD:
The grievance is allowed. Using the dictionary definition of session, and considering past practice, the Arbitrator concludes that a session, for the purposes of the Agreement, consists of the period of time during which the clinic is scheduled to operate. A declaration shall be issued to the effect that employees working in mobile clinics are entitled to a rest period of fifteen (15) consecutive minutes during the operation of each clinic. The Arbitrator retains jurisdiction to deal with difficulties that may arise in the implementation of the award.

DECISION: 2000-082

Nova Scotia (Justice) (Corrections) AND Nova Scotia Government Employees Union (NSGEU), Local 480

North, Gregory I. - Arbitrator

Ronald A. Pink, for the Union

Dale Darling, for the Employer

September 27, 2000

ISSUES:

Illness or disability - Benefits 8:3300; Overtime - Defining overtime - Overtime hours worked 8:2130.

CIRCUMSTANCES:

This is a policy grievance. The Union accuses the Employer of changing its method of compensating employees for benefits arising out of the letter concerning "work with regards to the 104 hours". Although employees are scheduled to work a 12 hour shift, when an employee is absent from work for a legitimate reason on the 7th shift in a two-week period, the Employer only gives credit for benefit purposes for 8 hours. The Union submits that these employees are wrongfully losing 4 hours of benefits on such occasions. It is the position of the Employer that in order to get credit, either in pay or time off in lieu, the employee must be at work on the 7th shift. This is because the 104 hours as described in the letter, are overtime, and working them is optional; as a result, having accepted the option of working the 104 hours, employees are only entitled to compensation if the hours are actually worked.

AWARD:

The grievance is allowed. Once an employee has exercised the option of working the 104 extra hours, those hours become a part of the regular and normal schedule of that employee. While the parties agreed to a change in the pay treatment of the 104 hours, there was no change to the benefit treatment of those hours. If they had intended to make such a change, they would have so stated in the Collective Agreement. The Arbitrator finds that employees who are scheduled to work a 7th shift but are unable to report to work are entitled to be compensated for the normal hours of work that they would have otherwise performed: 12 hours. The Arbitrator further finds that this also applies to claims arising out of vacation, sick leave, time off in lieu, and bereavement. However, this will not be extended to holiday hours, because the Agreement clearly defines holiday benefits as 8 hours.

DECISION: 2000-083

Halifax Regional Municipality AND Nova Scotia Union of Public Employees (NSUPE), Local 13

MacKeigan, Peter J. - Arbitrator

Mary Ellen Donovan, for the Union

Ron Stockton, for the Employer

September 18, 2000

ISSUES:
Arbitrability - Agreement as primary source of jurisdiction 2:1200; Interpretation - Words and phrases - And 4:2100; Job posting - Vacancy 5:2510.

CIRCUMSTANCES:
The Grievor, a lifeguard, applied for a temporary position as Recreational Coordinator. No other members of the bargaining unit applied for the position. The Grievor's supervisors decided not to consider his application because backfilling his position would be inconvenient. A non-bargaining unit person was hired. The Union argues that the Grievor, as the only member of the bargaining unit to express interest in the position, should have been appointed to fill it. The Employer argues that ambiguity in the Agreement's definition of "Vacancy", specifically in the use of the word "and" means that a vacancy is only a position open for longer than 12 months. They also argue that in the definition of vacancy, the article should be read as if a comma were inserted after the word "position" to clarify the ambiguity. As well, the Employer argues that past practice in the city of Dartmouth is that a 6 month position is not a vacancy as defined by the Agreement, and is not subject to the bargaining unit seniority provisions of the Agreement.

AWARD:
The grievance succeeds. To adopt the meaning suggested by the Employer would require that the Arbitrator change the wording of the Agreement. Such a determination would constitute amending the Agreement, which would exceed the authority of the Arbitrator. There is nothing in the Agreement to suggest that application of seniority only applies to "vacancies", as opposed to other job openings. In filling the position in question, the Employer failed to consider the applicant with the greatest seniority and who possessed the required qualifications. The Arbitrator orders the Employer to pay the Grievor the difference between the wage he made as lifeguard and that which he would have received as Recreation Coordinator, with corresponding benefits to the extent that they may also have been affected. The Arbitrator retains jurisdiction in the event any issues may arise as to application of the award.

DECISION: 2000-084

Southwest Regional School Board AND Canadian Union of Public Employees (CUPE)

Veniot, Milton J. - Arbitrator

Laurie Hitchens, for the Union

Noella Martin, for the Employer

July 28, 2000

ISSUES:
Pension plans - Incorporated into agreement 2:1200, 4:1200; Remedies - Types of remedy - Rectification 2:1440.

CIRCUMSTANCES:
This is a policy grievance to ascertain whether the Employer has breached the Agreement by failing to provide funds for a 5+5 pension plan. The Employer's position is that it never intended to fund such a plan, that it cannot afford such a plan, and that nothing in the Agreement binds it to fund such a plan. The Union's position is that although the amounts were not explicitly named in the Agreement, at all times when pensions were discussed, a 5+5 plan was intended. The Union claims that it is ambiguity of language in the Agreement that obscures the meaning, that the parties had verbally agreed upon a 5+5 plan, and that the Arbitrator can rectify the error leading to the Employer's refusal to meet its commitment.

AWARD:
The grievance is dismissed. As there is no evidence to satisfy the Arbitrator that the parties had reached accord as to the terms of the pension but failed to write them down correctly, there is no basis for rectification. Nor is there reason to believe that the Employer deliberately misled the Union into a false belief that agreement had been reached on the exact nature of the plan.

DECISION: 2000-085

Pepsi-Cola Canada Beverages AND International Brotherhood of Teamsters, Chauffeurs, Warehousemen, Helpers & Miscellaneous Workers, Local 927

Veniot, Milton J. - Arbitrator

Ronald E. Pizzo, for the Union

Karin A. McCaskill, for the Employer

August 30, 2000

ISSUES:
Discipline and discharge - Grounds for Theft 7:3310, 7:3314.

CIRCUMSTANCES:
The Grievors were accused of stealing a partial pallet of Pepsi and selling it to a local business. The Employer dismissed them. The Union's position is that the Grievors removed the pallet in error, and left it with another customer, and that when they discovered the error they recovered the pallet and returned it to its rightful destination.

AWARD:
The grievances are dismissed. There is ample evidence to show that the Grievors committed a substantial theft for significant financial gain. They have destroyed the employment relationship, and the Employer's response is not excessive.

DECISION: 2000-086

Victoria Haven Nursing Home AND National Automobile, Aerospace, Transportation & General Workers Union of Canada (CAW-Canada), Local 4610

Veniot, Milton J. - Arbitrator

Victor Tomiczek, for the Union

Cynthia M. Yazbek, for the Employer

September 28, 2000

ISSUES:
Bargaining unit - Employees excluded - Supervisors and foremen 5:1126.

CIRCUMSTANCES:
This is a policy grievance. The Employer is a nursing home. It recently created a Licensed Practical Nurse (LPN) position, which it claims is supervisory, and not part of the bargaining unit. The Union requests a decision that the position is correctly part of the bargaining unit, and asks that jurisdiction on remedy be reserved. The Employer's position is that there is no breach, but suggests that the most appropriate remedy is an order that the present incumbents be made members of the bargaining unit and that they remain in their positions.

AWARD:
The grievance succeeds. LPNs do not exercise management functions as defined by the Trade Union Act. The Arbitrator orders and declares that the incumbents are now members of the bargaining unit, and henceforth the provisions of the Agreement will apply to them. The Arbitrator retains jurisdiction to deal with the implementation of the award.

DECISION: 2000-087

Nova Scotia Power Inc. AND National Automobile, Aerospace, Transportation & General Workers Union of Canada (CAW-Canada), Local 4610

Veniot, Milton J. - Arbitrator

Victor Tomiczek, for the Union

Terry L. Roane, for the Employer

September 29, 2000

ISSUES:
Overtime - Management rights 5:3210, 5:3220; Technological change - Collective agreement restrictions 5:2200.

CIRCUMSTANCES:
The Employer developed a new system for taking calls during power outages which routes the calls to Halifax. The Union grieves that this is work which should be done by members of the bargaining unit in the Sydney Call Centre; that sending the calls to Halifax causes a loss of overtime to members of the bargaining unit; and that the Employer bargained in bad faith during the creation of the present Agreement, raising issues of estoppel and past practice. The Employer denies violation of the Agreement, and states that the change to the new system was made for valid business reasons.

AWARD:
The grievance succeeds in part. The Arbitrator finds a "trifling" formal breach of a notice requirement. The only remedy for the notice breach was a declaration that it had occurred. All other issues are dismissed. The overtime in question is unpredictable as to occurrence and of uncertain duration when it occurs; its assignment to others would not violate the Agreement because its performance by persons outside the bargaining unit could not bring the person doing it within the unit. The Union's arguments on the ground of past practice are found to be without merit. The Employer is not estopped from implementing the system because there is no evidence of misrepresentation by the Employer.

DECISION: 2000-088

Victoria Haven Nursing Home AND National Automobile, Aerospace, Transportation & General Workers Union of Canada (CAW-Canada), Local 4610

Veniot, Milton J. - Arbitrator

Lynn Pollack, for the Union

John A. Greer, for the Employer

October 5, 2000

ISSUES:
Evidence - Types of evidence - Extrinsic evidence 3:4400; Pension plans - Incorporated into Agreement 2:1200, 7:7200.

CIRCUMSTANCES:
This is policy grievance brought by the Union. At present not all part-time employees are eligible for the pension plan; indeed, more part-time employees are not eligible for the pension plan than are eligible. The Union seeks a determination that the Employer has breached the Agreement by contracting for the present plan; as remedy, the Union asks that all full- and part-time employees shall be part of the pension plan.

AWARD:
The grievance is allowed. In spite of some ambiguity in the Agreement, the Arbitrator finds that extrinsic evidence points to the Union's having negotiated for, and the Employer's having agreed to, a pension plan covering all members of the bargaining unit. The Arbitrator orders the parties to meet and attempt to reach a resolution of matters, and retains jurisdiction in all aspects of remedy.

DECISION: 2000-089

Cape Breton Regional Municipality AND Canadian Union of Public Employees (CUPE), Local 759

North, Gregory I. - Arbitrator

Terry MacKenzie, for the Union

Michael MacKeigan, for the Employer

September 13, 2000

ISSUES:
Job classifications and descriptions - Creation or revision 5:2440.

CIRCUMSTANCES:
This is to determine a number of disputes arising from classification of employees following amalgamation of municipalities in Cape Breton.

AWARD:
The Arbitrator determined classification for all employees whose cases were referred to him and reserved jurisdiction to deal with matters of clarification or resolution.

DECISION: 2000-090

Nova Scotia (Human Resources) AND Nova Scotia Government Employees Union (NSGEU)

MacKeigan, Peter J. - Arbitrator

Kimberley H.W. Turner, for the Union

Sarah Bradfield, for the Employer

October 12, 2000

ISSUES:
Time-limits - Restriction on arbitrability 2:1100.

CIRCUMSTANCES:
This is a reward on preliminary matters relating to a grievance on promotion. The Grievor claims he is entitled to be placed in the position of Full Professor and grieves his not having been so appointed. The Employer argues that time-limits on the grievance have expired; the grievance should have been filed within 25 days of April 27th, whereas it was not filed until July 15. Therefore, the matter is not arbitrable. The Union's position is that the issue of promotion was bundled with several other issues, and there was a tacit agreement between the parties not to proceed to grievance unless the negotiations failed. Therefore, the Employer is estopped from relying on the time-limits as defined by the Agreement.

AWARD:
The Arbitrator finds that the triggering event for the Article on time-limits did not occur when the Grievor was advised that he would not be promoted. Rather, it occurred when negotiations broke down. At that point, the Union promptly filed their grievance. The time-limits were not exceeded, the matter is arbitrable, and the grievance may proceed to be heard.

DECISION: 2000-091

Halifax Regional Rehabilitation Centre AND Canadian Union of Public Employees (CUPE), Local 1028

North, Gregory I. - Arbitrator

Lionel Clarke, for the Union

Ray Kuszelewski, for the Employer

October 6, 2000

ISSUES:
Discipline and discharge - Grounds for - Absence from work 7:3100; Illness or disability - Employer response - Discipline - Absenteeism 7:3200, 7:3245.

CIRCUMSTANCES:
The grievance arises from the Grievor's absence from work for nine days due to a severe attack of flu. On the fifth day, not having been to the grocery store since the onset of her illness, she found that she had no food in the house to prepare for her children. She took them to a restaurant with the intention of buying supper for them from the drive-through window. When one of the children was insistent on eating in, she took the children indoors for their meal. She and the children were observed leaving the restaurant by a fellow employee, who reported her presence there to the Employer. As a result, the Employer refused to accept the statements she provided from her doctors attesting to her illness, and imposed discipline in the form of a written warning and loss of two days'

pay and benefits. The Union asks that the written warning be removed from the Grievor's file, and that she be reimbursed for the loss of pay and benefits. The Employer protests that the grievance is inarbitrable on two grounds: lack of jurisdiction on the basis of the Arbitrator's having been appointed under the terms of a now-expired Agreement; and excessive delay on the part of the Union. In any case, the Employer's position is that there are sufficient factors present to raise an issue as to the credibility of the Grievor with respect to her absence from work on the two days in question.

AWARD:
The preliminary matters of the Employer's claim of inarbitrability on the grounds of jurisdiction is found to be without merit. On the issue of delay, the Arbitrator found that the Union did not act in bad faith, nor has the delay in any way hampered a fair hearing. The matter proceeded to hearing. The grievance succeeds. While the Employer had reason for concern upon finding that the Grievor visited a restaurant shortly after advising that she was ill, the Grievor's explanation for her having done so is perfectly plausible. Being absent due to sickness is not a sentence to house arrest. Individuals who are ill may be required to leave their home for various reasons; that does not result in their ceasing to be eligible for sick leave benefits.

DECISION: 2000-092

Romard, Robert Joseph (Plaintiff) AND (Dartmouth Ambulance)(Employer) AND Canadian Union of Public Employees (CUPE), Local 3264 AND Canadian Union of Public Employees (CUPE), National (Defendants)

Honourable Justice Cacchione

Bernadette Maxwell, Ronald A. Stockton, for the Union

Burley A. Jones, Kelly Murray, Larry Power, for the Employer

September 6, 2000

ISSUES:
Duty of fair representation 9:1300.

CIRCUMSTANCES:
The Plaintiff brings this action in negligence against his former Union, alleging a breach of the duty of fair representation owed to him as a member of the Union. The Plaintiff was terminated for allegedly falsifying his time sheets. He was given a Record of Employment showing that he had been dismissed and his vacation pay withheld on the basis of fraudulent activity. A grievance was filed on his behalf. After negotiations between the Union and Employer, the Union persuaded the Plaintiff to withdraw his grievance in return for the Employer's changing his status from "dismissed"

to "layoff". However, the new R.O.E. showed the reason for termination as "other", and the Plaintiff's claim for Employment Insurance was denied. Ultimately, the Plaintiff was obliged to hire legal counsel to represent him in his appeal. The Plaintiff complained to the national office that his local was not working for him. In spite of the national office's advising the local to file a grievance on behalf of the Plaintiff, the local refused to do so. The issues are whether the Union owed a duty of fair representation to the Plaintiff; whether, if such duty was owed, the Defendants breached it; whether CUPE National owed a duty of fair representation to the Plaintiff, and if so, whether it breached this duty; if either or both of the Defendants owed a duty and breached it, what damages flow from this breach.

AWARD:
The Court finds that the Union owed a duty of fair representation to the Plaintiff, and breached its duty. CUPE National did not owe the Plaintiff a duty of fair representation; further, if CUPE National's representative in this case did owe a duty of fair representation to the Plaintiff, and did breach it, the breach was not sufficient to attract liability. The Court awards damages for mental stress suffered by the Plaintiff as a result of the Union's inaction, and for violation of the Plaintiff's rights, as well as sums for re-training, and to compensate for the Plaintiff's expense in hiring a lawyer to represent him in his Employment Insurance appeal. The Plaintiff's costs shall be against the Local, and CUPE's costs shall be against the Plaintiff.

DECISION: 2000-093

Cape Breton Healthcare Complex AND National Automobile, Aerospace, Transportation & General Workers Union of Canada (CAW-Canada), Local 4600

Outhouse, S. Bruce - Arbitrator

Victor Tomiczek, for the Union

Raymond Kuszelewski, for the Employer

October 18, 2000

ISSUES:
Overtime - Management rights 5:3210, 5:3220.

CIRCUMSTANCES:
When no casual LPN was available to cover a shift for an LPN who was ill, the Employer called in a casual RN to cover, rather than give overtime hours to an LPN. The Union's position is that if no casual LPN was available to cover the shift, the Employer should have given the Grievor the opportunity to work those hours. The Employer's position is that it is only prohibited from assigning bargaining unit work to non-bargaining unit employees where doing so would result in the layoff

of a member of the bargaining unit. Since there were no LPNs on layoff at the time, no breach can have occurred.

AWARD:
The grievance is dismissed. The Agreement allows the Employer to decide when overtime is to be worked. The overtime provisions of the Agreement govern the rate of pay and distribution of overtime if and when management is assigned to regular employees.

DECISION: 2000-094

Scotian Gold Co-operative Ltd. AND Bakery, Confectionery & Tobacco Workers' International Union (BCT), Local 446

North, Gregory I. - Arbitrator

Rene Quigley, for the Union

David Reid, for the Employer

November 8, 2000

ISSUES:
Disciplinary penalties - Arbitral review - Substitution of penalty 7:4000; Disciplinary penalties - Mitigating factors - Provocation 7:4412; Discipline and discharge - Grounds for - Insubordination 7:3610, 7:3612.

CIRCUMSTANCES:
The Grievor contradicted an order of his supervisor by directing another employee, for safety reasons, to use a truck rather than a forklift to move stacked boxes across a parking lot. When the supervisor found that the Grievor had countermanded his order, he confronted the Grievor angrily, and they exchanged insults and profanity, even though the supervisor ultimately agreed the use of the truck was preferable. Later in the day, the Grievor was called to a meeting at which he was reminded of his responsibility to obey his supervisor. In the belief that he was being given an ultimatum that amounted to dismissal, the Grievor turned in his keys, phone, and pager, and left the premises. When it was made clear to him that he had not been fired, he worked through the Union to arrange to return to work. The Employer accepted him back, but imposed a five-day suspension without pay. The position of the Union is that the Grievor's conduct in bringing forward a safety issue, and in responding in kind when attacked by his supervisor, merited neither termination nor suspension. The Employer's position is that the Grievor's insubordination in refusing directions, behaving abusively toward his supervisor, and leaving the premises without permission called for suspension.

AWARD:
The grievance succeeds in part. While the Grievor's behaviour toward his supervisor was inappropriate, it was at least in part the result of the supervisor's toward him. The penalty imposed upon him was therefore excessive. The Arbitrator substitutes a formal warning to be placed in the Grievor's personnel file that his actions constituted insubordination, and that similar behaviour in future will result in further disciplinary action. The suspension is revoked, and the Grievor is to be reimbursed for the five days' pay lost as a result of it.

DECISION: 2000-095

Black & McDonald Ltd. AND International Brotherhood of Electrical Workers (IBEW), Local 1852

MacDonald, David J. - Arbitrator

Ronald Pink, for the Union

Greig MacLeod, for the Employer

November 10, 2000

ISSUES:
Contracting out 5:1300.

CIRCUMSTANCES:
This is a policy grievance alleging that the Employer circumvented Union hiring by contracting the work out to Vic Aucoin Electric, in violation of the Agreement. The Employer asserts that they were not the contractors hired for the job in question, and that the work performed was not theirs. The Union's position is that as the Employer provided direction to the employees, provided tools, advised on completion, authorized overtime, controlled the testing and certification of the work, and obtained the permit for completion from Nova Scotia Power, the Employer was responsible for the job.

AWARD:
The grievance is dismissed. The employees who did the job were hired, directed and disciplined by Vic Aucoin Electric, and the contract for the work was with that firm, not with the Employer.

DECISION: 2000-096

Nova Scotia (Human Resources) AND Nova Scotia Government Employees Union (NSGEU)

Veniot, Milton J. - Arbitrator

David Roberts, for the Union

Sarah Bradfield, for the Employer

November 15, 2000

ISSUES:

Discipline and discharge - Grounds for - Assault 7:3010, 7:3430; Discipline and discharge - Grounds for - Off-duty conduct 7:3010; Discipline and discharge - Scope of arbitral review 7:4100.

CIRCUMSTANCES:

The Grievor was accused of assaulting two or three young girls at a public pool. The Employer extended the Grievor's period of probation while awaiting the dispensation of criminal charges against him and the results of the Employer's investigation into the incident. At the conclusion of its investigation, the Employer terminated the Grievor's employment. The Union grieves that by terminating the Grievor, the Employer was raising a dead issue, since he had been disciplined fully by a letter sent to him from the Employer; that there is lack of proof of the acts alleged against the Grievor; that the Employer's investigation was unreasonable; that the acts alleged were not sufficient to warrant termination; that the Employer acted unreasonably, arbitrarily, and in bad faith; and the dismissal was unjustified.

AWARD:

The grievance is dismissed. The letter in question was not a disciplinary letter, nor did it put the matter at rest; indeed, the Employer therein stated its intention of carrying on its investigation and levying discipline if warranted. The Union's complaints against the Employer's investigation are without merit. The off-duty conduct of the Grievor was grounds for discipline, and the Employer's decision to terminate was not unreasonable, arbitrary, or in bad faith. The Arbitrator finds further that he does not have the right to apply a just cause standard in this case; his duty was to determine whether the Employer has breached the Agreement, and he was unable to make such a determination.

DECISION: 2000-097

Braemore Home AND Canadian Union of Public Employees (CUPE), Local 3513

North, Gregory I. - Arbitrator

Barbara Kowalski, for the Union

John Greer, for the Employer

November 22, 2000

ISSUES:
Job posting - Vacancy 5:2510; Seniority - Applications - Promotion, demotion and transfer 6:2000, 6:2100.

CIRCUMSTANCES:
The Employer moved an employee from Unit B to Unit E. To replace him, it transferred the least senior employee on Unit E to Unit B. Three employees from Unit E with more seniority than the transferred employee grieve that the position on Unit B should have been posted, and they should have had the opportunity to apply for the position. The Employer's position is that no vacancy occurred because the number of employees did not change, and that the term transfer as used in the Agreement does not apply to circumstances in which an employee is assigned to perform the same job but in a different location. The Union's position is that the Employer is obliged to post all vacancies, and that seniority must be the determining factor in the filling thereof.

AWARD:
The grievance is allowed. When the Employer made the decision to transfer an employee from Unit B to Unit E, at that point his prior position on Unit B became vacant, and the Employer should have posted the position and complied with the posting provisions of the Agreement. The Arbitrator orders that the position be posted.

DECISION: 2000-098

Municipal Ready Mix Ltd. AND Labourers' International Union of North America, Local 1115

Scaravelli, Nicoll M. - Arbitrator

Blaise MacDonald, for the Union

G. Wayne Beaton, for the Employer

November 21, 2000

ISSUES:

Discipline and discharge - Grounds for - Collective Agreement limitations 7:1300; Remedy -Type of grievance - Union security - Dismissal of employee 2:1450.

CIRCUMSTANCES:

The Grievor, after several days work, was identified as the former owner of a company that had defaulted on a debt to the Employer. After the superintendent approached the Grievor about the debt, the Grievor left the premises, under the impression that he had been fired. The Grievor claims that the superintendent told him that he must pay a portion of his weekly pay cheques toward the debt or be fired. The superintendent claims that although he did raise the issue of the debt, he did not suggest that deductions should be made from the Grievor's pay, nor did he threaten to fire the Grievor if he did not agree to the deductions. The Union asks for payment of lost wages, reinstatement without loss of benefits, general damages, punitive damages, and a declaration of wrong doing.

AWARD:

The grievance succeeds in part. The Employer acted beyond its authority in exercising its management rights. However, the Arbitrator finds that its misconduct did not amount to inducement to breach of contract with the Union for unlawful deduction from wages. There is no evidence of continuing ill effect on the Grievor resulting from the termination, nor was the Employer's behaviour so malicious or outrageous as to constitute an actionable wrong. For these reasons, the Arbitrator denies the request for damages. The Employer is ordered to compensate the Grievor for any direct loss of wages and benefits resulting from the breach.

DECISION: 2000-099

Nova Scotia Power Inc. AND International Brotherhood of Electrical Workers (IBEW), Local 1928

Outhouse, S. Bruce - Arbitrator

Ray Larkin, for the Union

Jamie Campbell, for the Employer

November 30, 2000

ISSUES:
Seniority - Applications - Lay-off 6:2000, 6:2200.

CIRCUMSTANCES:
This is a policy grievance to determine whether the Employer has the right, under the Agreement, to reduce the number of employees in a classification by demoting some of the employees to a lower one, without regard to seniority. The Employer created a new classification at lower pay, and informed the staff that those not retained could either be demoted to the new classification, at a significant pay cut, or be terminated. Those retained were selected on the basis of "report point seniority", not bargaining unit seniority. The Union's position is that the Employer must lay off using bargaining unit seniority. The Employer's position is that the layoff provision of the Agreement was not triggered because there was no reduction in the total number of the workforce.

AWARD:
The grievance succeeds. To accept the Employer's definition of layoff would be to do violence to seniority rights and render illusory the Agreement's protection of senior workers, especially with respect to demotions and transfers. The Arbitrator orders the Employer to reinstate the senior employees who were demoted or who resigned under protest, and make them whole in terms of lost wages and benefits. The Arbitrator retains jurisdiction to deal with difficulties in implementation.

DECISION: 2000-100

Canada Post Corp. AND Canadian Union of Postal Workers

Christie, Innis - Arbitrator

Kevin Buckland, Ed Johnson, for the Union

Joe Doucette, Francis Thimot, for the Employer

November 12, 2000

ISSUES:
Seniority - Applications - Overtime 5:3222.

CIRCUMSTANCES:
The Employer called a temporary worker in to cover hours for a sick temporary letter carrier filling in the absence of the permanent carrier on that route, thus going "temp to temp". The Union claims that the Employer should have offered the overtime to a regular employee. It asks that the Employee who should have been offered extended hours or overtime be compensated. The Employer's position is that the relevant position is that of the permanent employee, not the temporary workers'.

AWARD:
The grievance succeeds. None of the provisions of the Agreement put forward by the Employer show intent to by-pass the rights of employees to extended hours and overtime wherever a temporary employee happens to be ensconced. The Arbitrator orders the Employer to compensate whomever should have been offered extended hours or overtime, and retains jurisdiction should the parties be unable to agree.

DECISION: 2000-101

Canada Post Corp. AND Canadian Union of Postal Workers

Christie, Innis - Arbitrator

Kevin Buckland, Ed Johnson, for the Union

Joe Doucette, Francis Thimot, for the Employer

November 13, 2000

ISSUES:
Management rights - Schedules 5:3100.

CIRCUMSTANCES:
The Union alleges that a part-time letter carrier route was assessed at over 360 minutes, and for that reason should have been converted to a full-time route. The Union claims that the Employer moved part of the work of that route to another part- time route "on paper only" in order to avoid making the conversion. The Employer's position is that a route's being assessed at over 360 minutes does not automatically make it full-time, and that routes are always in a state of flux, and that the adjustments were made properly. According to the Employer, the Agreement allows valid

alternatives to conversion.

AWARD:
The grievance is allowed. While the Employer is entitled to make adjustments to put the route back below 360 minutes, it was required by the Agreement to make those changes within one month. Therefore, the letter carrier affected, or the letter carrier who would have been entitled to the walk had it been made full-time on schedule, and those who would have been affected by consequent changes are to be compensated for the difference between what they would have earned if the Agreement had been honoured and what they in fact earned.

DECISION: 2000-102

Westin Nova Scotian Hotel AND Hotel Employees & Restaurant Employees International Union (HERE), Local 662

Gibson, Elaine - Chair

Ronald A. Stockton, for the Union

Shelley Alward, for the Employer

December 2, 2000

ISSUES:
Skill and ability - Burden of proof 5:2440, 6:3200.

CIRCUMSTANCES:
The Grievors have been classified as Class III engineers. Other engineers for the Employer are classed as Class II engineers. The Union claims that the Grievors' classification should be changed to Class II.

AWARD:
The grievance fails. The Union has not established that the Grievors' classification is improper. It appears that the Class II engineers have additional qualifications which are required by the Employer and which justify their higher classification.

DECISION: 2000-103

Halifax Regional Municipality AND Municipal Assn. of Police Personnel (MAPP)

Ashley, Susan M. - Arbitrator

Ronald Pink, for the Union

Jamie S. Campbell, for the Employer

December 1, 2000

ISSUES:
Promotion, demotion and transfer - Seniority 6:2000, 6:2100.

CIRCUMSTANCES:
The Employer was creating a promotion list for the position of Sergeant I, from which staff were to be promoted in order of seniority. The list had to contain twenty names. Of the eighteen candidates of Sergeant II rank who applied for promotion, all passed both test and interview. Of the Constables who passed the test, the Employer selected the two who scored highest on the test to interview. Both passed the interview and were placed on the list. The Union argues that the Constables who passed the test and were not interviewed were denied the opportunity to be eligible for promotion. If all the Constables had been interviewed, and passed the interview, the two spots on the list would have been filled by the two most senior qualified Constables Although the promotion process is based on skill and ability, seniority governs once the applicants have met the Employer's tests of skill and ability. The Employer claims that ranking by examination scores is acceptable practice in such unusual circumstances as occurred here. The Employer also objects to the grievance on the grounds of its having been filed outside the time limits.

AWARD:
The grievance succeeds. The circumstances under which the Employer is entitled to rank by examination scores are limited and do not correspond to the present situation. The Employer should have interviewed all the Constables who were eligible for interview, and the Arbitrator orders that this be done. Respecting the Employer's objection on time limits, it is clear that the Employer's past practice has been to waive time-limits, and the present circumstances do not warrant a strict compliance which has not been similarly enforced in the past.

DECISION: 2000-104

Strait Regional School Board AND Nova Scotia Teachers' Union (NSTU)

Kydd, William H. - Arbitrator

Lorraine Lafferty, for the Union

Peter McLellan, for the Employer

August 29, 2000

ISSUES:
Interpretation - Intention of the parties 4:2100.

CIRCUMSTANCES:
The Employer used a portion of the Fund for the Strait Regional Institute for Staff Development (SRISD) to fund activities not related to professional development. The Union claims that the fund can only be spent by the SRISD Committee for professional development, and the Employer's use of funds for sabbaticals was a violation of the Agreement. The Employer's position is that the "tag provision" indicates that the funds may be dispersed as determined by a predecessor committee.

AWARD:
The grievance succeeds. There are other logical explanations for the tag provision that are consistent with the literal interpretation and do not conflict with unambiguous language stating that the fund is administered by the SRISD Committee.

DECISION: 2000-105

SCR Electric Services Ltd. AND International Brotherhood of Electrical Workers (IBEW), Local 625

MacKeigan, Peter J. - Arbitrator

Gordon Forsyth, for the Union

Steven Harrison, for the Employer

December 5, 2000

ISSUES:
Union - Compliance with collective agreement - Check off 9:1200; Collective agreement - Form and content - Pension, insurance and welfare plans 4:1400.

CIRCUMSTANCES:
The Union claims that the Employer failed to pay monies owing to Industry Improvement Fund, Recreation Fund, Building Trades Fund, Training Fund, Health/Welfare Fund, and Pension Fund. The Union claims that the Employer failed to pay monies owing to Industry Improvement Fund, Recreation Fund, Building Trades Fund, Training Fund, Health/Welfare Fund, and Pension Fund.

AWARD:
The grievance succeeds. The Arbitrator finds that the Employer breached the Agreement by failing to pay these funds, and ordered that they be payed, as well as legal fees, arbitration fees, disbursements and HST totalling $5),160.12.

DECISION: 2000-106

Ace Towing Ltd. AND International Union of Operating Engineers (IUOE), Local 721

Slone, Eric K. - Arbitrator

Kimberly Turner, for the Union

Ken Jones, for the Employer

December 5, 2000

ISSUES:
Collective agreement - Form and content - Pension, insurance and welfare plans 4:1400; Union - Compliance with collective agreement - Check off 9:1200.

CIRCUMSTANCES:
This is a consent award. Both parties agree that the Employer has failed to pay contributions to Trust Funds for six months.

AWARD:
The grievance succeeds. The Arbitrator finds that the Employer has breached the Agreement and orders the Employer to remit Health & Welfare, Pension, Industry Improvement Fund, Recreation Fund, and Training Fund benefits.

DECISION: 2000-107

Chignecto Central Regional School Board AND Canadian Union of Public Employees (CUPE), Local 3890

North, Gregory I. - Arbitrator

Terry Goulding, for the Union

Lawrence A. Currie, for the Employer

December 13, 2000

ISSUES:
Credibility 3:5100; Disciplinary penalties - Culminating incident 7:4310; Discipline and discharge - Grounds for - Conflict of interest - Use of confidential records 7:3330.

CIRCUMSTANCES:
The Grievor was accused of taking a confidential document from the office and placing it in the employee lunchroom. Taking into account the Grievor's prior disciplinary record, the Employer took the position that this was a culminating incident, and terminated him. The Union's position is that the Grievor was terminated without just cause, and requests full retroactive reinstatement.

AWARD:
The grievance is dismissed. Where the Grievor's testimony conflicts with that of other witnesses, the testimony of the other witnesses is preferred. The Grievor's evidence and demeanor was evasive, self-serving, and, at times, not credible. The Grievor had been made aware of the need for confidentiality. In removing the documents and placing them in the lunchroom, he violated his duty of loyalty. Given that the Grievor's disciplinary record was extremely poor over a very short period of time, this event constituted a culminating incident that justifies the Employer's decision to terminate the Grievor's employment.

DECISION: 2000-108

International Brotherhood of Electrical Workers, Local 625 AND Bakery, Confectionery, Tobacco Workers & Grain Millers International Union (BCT), Local 446

Ashley, Susan M. - Arbitrator

Rene Quigley, Sandra Whitehead, for the Union

Fern Tardif, for the Employer

December 13, 2000

ISSUES:
Temporary, casual and part-time employees - Wage structure 5:2420; Vacancy 5:2510.

CIRCUMSTANCES:
When a clerical worker was laid off work due to an injury, a long-term casual worker for the same office was placed in her position. The Employer raised the replacement's status from casual to temporary full-time, and increased her wages to that of a regular clerical. The Union's position is that she is still a casual employee and should not have received a wage increase, and that the Employer created a new position (temporary full-time clerical) when it hired the casual worker to replace the incumbent. By way of remedy, the Union asks that the Employer raise the wages of the other clerical workers in the bargaining unit by the same amount that her wages were raised. It also requests that the parties put in writing the terms and conditions of temporary employment, confirming that the injured incumbent is entitled to return, and direction from the Arbitrator that in future similar situations will be handled in the same way. The Employer's argument is that it was entitled to fill the position on a the temporary basis, and that the worker must be paid at the rate applicable to the position she is filling; indeed, that the Employer would be in breach of the Agreement had it done otherwise. It also notes that the Arbitrator lacks jurisdiction to alter the terms of the Agreement by raising the wage rates of the other workers.

AWARD:
The grievance fails. The temporary replacement of the incumbent did not constitute creation of a new position. The Employer has stated that the position is only temporarily vacant due to the incumbent's disability, and the Employer is not limited by the Agreement with respect to filling temporary vacancies.

DECISION: 2000-109

Georgia Pacific Corp. AND International Union of Operating Engineers (IUOE), Local 721

Scaravelli, Nicoll M. - Arbitrator

Raymond Larkin, for the Union

Jack Graham, for the Employer

December 14, 2000

ISSUES:
Overtime - Distribution of overtime 5:3220.

CIRCUMSTANCES:
The Union alleges that the Employer assigned an unclassified employee to work overtime as a dozer operator when the Grievor, classified as a dozer operator, was available to work the overtime shift. The Employer's position is that it is within management's rights to determine whether an employee has worked his "share" of overtime, and to apportion overtime on this basis.

AWARD:
The grievance succeeds. The Employer's right to schedule overtime is limited by the express terms of the Agreement. In this case, the Employer failed to comply with terms dealing with scheduling weekend overtime in shiploading. As well, the Arbitrator would find another breach in a temporarily transferred employee's having displaced the Grievor in his classification for overtime work on the shift in question.

DECISION: 2000-110

ABT Building Products Canada Ltd. (Canexel Hardboard Division) AND Communication, Energy & Paperworkers Union of Canada (CEP), Local 434

Christie, Innis - Arbitrator

Dennis Grant, for the Union

Lynn M. Walsworth, Stephanie J. Thompson, for the Employer

December 19, 2000

ISSUES:
Work assignment - Bargaining unit work 5:1200, 6:2000.

CIRCUMSTANCES:
This is a policy grievance to determine the work the Spare Boiler Operator may perform. The Employer stated that it intended to assign duties to the Spare Boiler Operator as it saw fit, in order to keep him employed. These duties were not related to steam and boiler operation; they were jobs properly performed by a labourer. It is the position of the Employer that it may assign whatever maintenance duties it wishes to those in the Maintenance Department, so long as no senior employee is displaced. The Union's position is that the function of the Spare Boiler Operator is to operate the boiler room when a regular shift Boiler Operator is away, and when not doing so, to work with the Maintenance Department on steam and boiler related tasks. The Union seeks an order stating that when there is no work as described, he shall be laid-off or be placed in the labour pool for assignment as work becomes available to him according to seniority.

AWARD:
The grievance fails. The Spare Boiler Operator may not be assigned to fill vacancies expected to last 14 days according to the Agreement. However, work may be assigned to him for less than 14 days without infringing anyone's seniority. The Arbitrator retains jurisdiction to deal with questions arising from interpretation of the award.

DECISION: 2000-111

Carter Electric Ltd. AND International Brotherhood of Electrical Workers (IBEW), Local 625

Slone, Eric K. - Arbitrator

N/A, for the Union

N/A, for the Employer

December 18, 2000

ISSUES:
Collective agreement - Form and content - Pension, insurance and welfare plans 4:1400; Union - Compliance with collective agreement - Check off 9:1200.

CIRCUMSTANCES:
This is consent award dealing with the Employer's failure to remit trust fund contributions.

AWARD:
The parties agree that the Employer has breached the Agreement. The Arbitrator orders the Employer to pay the Union the sum of $23,830.14.

DECISION: 2000-112

Halifax Regional Municipality AND Municipal Assn. of Police Personnel (MAPP)

Christie, Innis - Arbitrator

Ronald A. Pink, for the Union

Terry L. Roane, for the Employer

December 15, 2000

ISSUES:
Illness or disability -Medical examinations 7:3220, 7:3230, 7:3250.

CIRCUMSTANCES:
This is a consent award. The Union alleged a breach of the Agreement when the Employer referred the Grievor to its Occupational Health Services. Through mediation, the Employer and the Union

have reached an agreement on mandatory referral of employees for certification of psychological fitness.

AWARD:
The parties are ordered to append the Memorandum of Agreement to the Collective Agreement.

DECISION: 2000-113

Hershey Canada (Moirs Plant) AND Bakery, Confectionery & Tobacco Workers International Union (BCT), Local 446

MacKeigan, Peter J. - Arbitrator

Rene Quigley, for the Union

Peter McLellan, for the Employer

December 26, 2000

ISSUES:
Illness or disability - Overtime 7:3626; Illness or disability - Reasonable accommodation 7:3220, 8:3340.

CIRCUMSTANCES:
The Grievor competed for and was accepted for the position of Spare Charge Hand. When she had done the job for several weeks, the Employer investigated her health restriction, and decided that the restriction would prevent her carrying out overtime as required by the job description. The Employer's position is that the Spare Charge Hand must be able to work overtime; the Grievor's not doing so would undermine morale among the employees who would be forced to work overtime in her place. Furthermore, the Employer claims, there was an agreement between the Union and the Employer that if the Grievor's doctor confirmed that the Grievor could not work overtime, she would be removed from the position of Spare Charge Hand. The Union denies that such an agreement existed, and insists that the Employer has failed in its duty to accommodate the Grievor's disability. The Union asks that the Grievor be reinstated and reimbursed for the pay differential lost since she was removed from the position.

AWARD:
The grievance succeeds. Given the Grievor's seniority, it is unlikely that she would be in a position to work more forced overtime than a few hours every few months at most. The Arbitrator is satisfied that the Employer can accommodate the Grievor without undue hardship. The Grievor is to be reimbursed for the monies she lost during her period out of the position, she is to be reinstated, and the Employer is ordered to accommodate her inability to work overtime at the end of the shift until

such time as her medical condition permits her to work the overtime.

DECISION: 2000-114

Cape Breton Development Corp. AND United Mine Workers of America, District No. 26

Milton Veniot, Dispute Resolution Officer

John MacLeod, for the Union

Eric Durnford, for the Employer

December 27, 2000

ISSUES:
Pension plans - Benefits 4:1400.

CIRCUMSTANCES:
Milton Veniot was appointed Dispute Resolution Officer to adjudicate a dispute arising under the federal Joint Planning Committee's Adjustment Program. At issue is the amount to be deducted from the payment made to individuals participating in a prorated Early Retirement Incentive Program (ERIP) and who were in receipt of a CPP disability pension. The Employer's position is that the maximum CPP deduction applies to the payment. The Union's position is that the deduction must be prorated.

AWARD:
The Dispute Resolution Officer finds that the Employer is entitled to deduct the lesser of the amount received from the CPP disability pension or the maximum deduction from the prorated ERIPs without prorating the deduction. There is no finding of non-compliance, nor any violation of the Adjustment Program.

DECISION: 2000-115

Kimberly - Clark Nova Scotia AND Communication, Energy & Paperworkers Union of Canada (CEP)

MacDougall, R. Lorne - Arbitrator

Raymond F. Larkin, for the Union

Eric B. Durnford, for the Employer

December 21, 2000

ISSUES:
Interpretation - Intention of the parties 4:2100; Interpretation - Words and phrases - Work - Work week 8:2120.

CIRCUMSTANCES:
The Grievors are a shift millwright and a shift electrician. While they were away from their positions on training for five days, they were replaced by day workers. The Union's position is that shift workers should have been given the opportunity to replace these workers because the Grievors were gone for less than a week. The Employer's position is that because a work week for the Grievors would have been three or four days, their being away for five days put them away from work for more than a work week; consequently the Employer was entitled to replace them with day workers.

AWARD:
The grievances fail. A week for the Grievors, who are shift employees working a compressed work week, consists of three or four days. Therefore, when they were absent for five days, they were absent for more than a week; the Employer did not breach the Agreement by replacing them with day workers.

Part 2

SUBJECT INDEX

2000

Subject Index

Arbitrability
- Agreement as Primary Source of Jurisdiction — 2000-018. A, 2000-083
- Individual Contracts of Employment — 2000-034
- Statutory Requirement — 2000-068

Bargaining Unit
- Employees Excluded
  - *Supervisors and Foremen* — 2000-086

Bereavement Leave — 2000-071

Bias — 2000-026, 2000-058

Collective Agreement
- Form and Content
  - *Pension, Insurance and Welfare Plans* — 2000-105, 2000-106, 2000-111

Contracting Out — 2000-025, 2000-049, 2000-065, 2000-078, 2000-095

Contracts of Employment — 2000-079

Credibility — 2000-038, 2000-107

Disciplinary Penalties — 2000-042
- Arbitral Review
  - *Scope* — 2000-016
  - *Substitution of Penalty* — 2000-003, 2000-008, 2000-094, 2000-020
- Culminating Incident — 2000-016, 2000-077, 2000-107
- Mitigating Factors — 2000-003
  - *Provocation* — 2000-094
- Progressive Discipline — 2000-077
- Reasonableness — 2000-020

Discipline and Discharge
- Burden of Proof — 2000-050

Collective Agreement Limitations 2000-098
Evidence
Standard of Proof 2000-003
Grounds for
Absence from Work 2000-029, 2000-034, 2000-091
Failure to Notify Employer 2000-016
Abuse of Leave of Absence 2000-068
Assault 2000-096
Conflict of Interest
Use of Confidential Records 2000-107
Insubordination 2000-094
Off-Duty Conduct 2000-096
Patient Abuse 2000-032, 2000-038, 2000-050
Refusal to Obey Instructions 2000-029, 2000-053, 2000-057
Theft 2000-085
Untrustworthiness 2000-074
Procedural Limitations on Discipline 2000-016
Scope of Arbitral Review 2000-096

Discrimination
Age 2000-002
Discipline
Onus 2000-008

Duty of Fair Representation 2000-092

Estoppel
Procedural Irregularities not Objected to 2000-056

Evidence
Types of Evidence
Extrinsic Evidence 2000-088

Good Faith
Vacancies, Transfers, Promotions 2000-048

Illness or Disability
Benefits 2000-082
Employer Response
Discipline
Absenteeism 2000-091
Medical Examinations 2000-112
Overtime 2000-113
Reasonable Accommodation 2000-113

Innocent Absenteeism 2000-067

Insurance and Welfare Plans
Entitlement to Benefits 2000-067
Incorporation into Collective Agreement 2000-076
Payment of Premiums 2000-040

Interest Arbitration 2000-001, 2000-009, 2000-036

Interpretation
Aids to Interpretation
Dictionaries 2000-081
Past Practice 2000-039, 2000-081
Statutes 2000-071
Intention of the Parties 2000-006, 2000-025, 2000-064, 2000-104, 2000-115
Management Rights 2000-006
Words and Phrases
And 2000-083
Jobs and Classifications
Job 2000-70
Skill and Ability
Qualifications 2000-004, 2000-006
Work
Work Week 2000-115

Job Classifications and Descriptions
Creation or Revision 2000-089

Job Posting
Criteria
Education 2000-019
Job Description Posted 2000-008
Posting Procedure 2000-004, 2000-005, 2000-012, 2000-021
Vacancy 2000-083, 2000-097

Jurisdiction
Sources
Collective Agreement 2000-027

Lay-off 2000-006

Burden of Proof 2000-066
Disability 2000-066

Management Rights 2000-030, 2000-055, 2000-075
Schedules 2000-101
Vacation Scheduling 2000-028

Medical Opinion
Ability to Perform 2000-048

Negotiating History 2000-028

Overtime
Defining Overtime
Overtime Hours Worked 2000-082
Distribution of Overtime 2000-109
Management Rights 2000-087, 2000-093

Past Practice 2000-028

Pension Plans
Benefits 2000-114
Incorporated into Agreement 2000-002, 2000-084, 2000-088

Performance Appraisals 2000-054

Progressive Discipline
Warning 2000-008

Promotion, Demotion and Transfer
Remedies 2000-062
Seniority 2000-103

Remedies
Substitution of Lesser Penalty 2000-057
Type of Grievance
Union Security
Dismissal of Employee 2000-098

Types of Remedy
Damages
Certainty of 2000-039
Loss of Reputation 2000-068
Rectification 2000-084
Reinstatement 2000-032, 2000-074

Rest Breaks 2000-081

Retroactivity 2000-024, 2000-078

Safety
Refusal to Obey Order 2000-003

Schedules 2000-033

Seniority
Acquisition
Non-unit Employees 2000-037
Applications 2000-075
Bumping 2000-073
Lay-off 2000-099
Overtime 2000-100
Promotion, Demotion and Transfer 2000-018, 2000-039, 2000-080, 2000-097

Settlements 2000-013, 2000-014, 2000-015, 2000-017

Skill and Ability
Arbitral Review
Senior Employee with Required Ability 2000-019
Burden of Proof 2000-004, 2000-012, 2000-102
Criteria of Ability and Qualifications 2000-012, 2000-018, 2000-062
Trial, Training and Familiarization Periods 2000-004, 2000-012

Statutes
Applied by Boards of Arbitration 2000-002, 2000-010, 2000-011

Statutory Holidays 2000-064

Successor Employer 2000-052

Technological Change
Collective Agreement Restrictions 2000-031, 2000-087

Temporary, Casual and Part-time Employees
Wage Structure 2000-108

Time-limits
Delay 2000-007
Mandatory or Directory 2000-007
Restriction on Arbitrability 2000-090
Waiver of 2000-007, 2000-018. A, 2000-056, 2000-06?

Trial, Training Period 2000-069

Union
Activity and Business 2000-054
Compliance with Collective Agreement
Check Off 2000-059, 2000-105, 2000-106, 2000-111
Recognition 2000-025

Vacancy 2000-021, 2000-108
Standard in Filling 2000-030

Vacation
Computation of Vacation and Vacation Pay
Period of Service 2000-052

Wages
Acting Pay 2000-035
Rates for New and Revised Classifications 2000-072

Work Assignment 2000-004, 2000-005
Bargaining Unit Work 2000-008, 2000-110
Contracting Out
Employees Outside Unit 2000-033

Part 3

EMPLOYER & UNION INDEX

2000

Employer & Union Index

ABT Building Products Canada Ltd. (Canexel Hardboard Division)	2000-068, 2000-110
Acadia University Faculty Assn.	2000-017
Ace Towing Ltd.	2000-106
Amherst Police Assn.	2000-054
Amherst (Town)	2000-054
Annapolis Valley Regional School Board	2000-056
Associated Freezers Corp.	2000-035
Bakery, Confectionery, Tobacco Workers & Grain Millers International Union (BCT), Local 446	2000-055, 2000-108
Bakery, Confectionery & Tobacco Workers' International Union (BCT), Local 446	2000-094, 2000-113
Ben's Ltd.	2000-055
Black and McDonald	2000-011
Black & McDonald Ltd.	2000-049, 2000-095
Bluewater Stevedore Union, Local 2	2000-027
Bowater Mersey Paper Co. Ltd.	2000-065
Braemore Home	2000-097
Canada Post Corp.	2000-033, 2000-074, 2000-100, 2000-101
Canadian Blood Services	2000-081
Canadian Union of Postal Workers	2000-033, 2000-074, 2000-100, 2000-101
Canadian Union of Public Employees (CUPE)	2000-084
Canadian Union of Public Employees (CUPE), Local 108	2000-037
Canadian Union of Public Employees (CUPE), Local 759	2000-073, 2000-089

Canadian Union of Public Employees (CUPE), Local 1028	2000-042, 2000-091
Canadian Union of Public Employees (CUPE), Local 1867	2000-039
Canadian Union of Public Employees (CUPE), Local 1876	2000-038
Canadian Union of Public Employees (CUPE), Local 2837	2000-051
Canadian Union of Public Employees (CUPE), Local 3064	2000-067
Canadian Union of Public Employees (CUPE), Local 3131	2000-018, 2000-018. A
Canadian Union of Public Employees (CUPE), Local 3264	2000-092
Canadian Union of Public Employees (CUPE), Local 3310	2000-025
Canadian Union of Public Employees (CUPE), Local 3513	2000-097
Canadian Union of Public Employees (CUPE), Local 3860	2000-020
Canadian Union of Public Employees (CUPE), Local 3890	2000-107
Canadian Union of Public Employees (CUPE), Local 3928	2000-060
Canadian Union of Public Employees (CUPE), Local 4150	2000-014
Canadian Union of Public Employees (CUPE), Local 5050	2000-013, 2000-057
Canadian Union of Public Employees (CUPE), National (Defendants)	2000-092
Cape Breton Development Corp.	2000-114
Cape Breton Healthcare Complex	2000-019, 2000-024, 2000-048, 2000-050, 2000-069, 2000-093
Cape Breton Regional Municipality	2000-025, 2000-073, 2000-089
Cape Breton-Victoria Regional School Board	2000-013, 2000-057, 2000-062
Carter Electric Ltd.	2000-111
Chignecto Central Regional School Board	2000-005, 2000-036, 2000-107
Children's Aid Society	2000-051
Children's Aid Society of Pictou County	2000-060
Communication, Energy & Paperworkers Union of Canada (CEP)	2000-115

Communication, Energy & Paperworkers Union of Canada (CEP), Local 40N	2000-016
Communication, Energy & Paperworkers Union of Canada (CEP), Local 141	2000-065
Communication, Energy & Paperworkers Union of Canada (CEP), Local 434	2000-068, 2000-110
Communication, Energy & Paperworkers Union of Canada (CEP), Local 440	2000-071
Community Lodge Inc.	2000-021
Construction Management Bureau Ltd.	2000-040, 2000-079
CTS Electric	2000-010
Dalhousie Faculty Assn.	2000-026, 2000-058
Dalhousie University	2000-026, 2000-058, 2000-078
(Dartmouth Ambulance)(Employer)	2000-092
Dartmouth Marine Slips	2000-061
Deep Sea Trawlers	2000-003
Delta Sydney	2000-053, 2000-080
EASCO Electric Ltd.	2000-70
EMC Emergency Medical Care Inc.	2000-001
Farmers Co-operative Dairy Ltd.	2000-016
Georgia Pacific Corp.	2000-075, 2000-109
Governors of Acadia University	2000-017
Halifax Civic Workers, Local 108	2000-008
Halifax County Regional Rehabilitation Centre	2000-042
Halifax Regional Municipality	2000-008, 2000-028, 2000-037, 2000-076, 2000-083, 2000-103, 2000-112
Halifax Regional Rehabilitation Centre	2000-091

Halifax Regional School Board	2000-023
Hershey Canada (Moirs Plant)	2000-113
Highland Visions Society	2000-032
Hotel Employees & Restaurant Employees International Union (HERE), Local 662	2000-041, 2000-102
ICS/The State Group Ltd.	2000-011
I.M.P. Aerospace Components Ltd.	2000-012
Industrial Union of Marine & Shipbuilding Workers of Canada, Local 13	2000-061
International Brotherhood of Electrical Workers (IBEW)	2000-044
International Brotherhood of Electrical Workers (IBEW), Local 625	2000-010, 2000-011, 2000-040, 2000-049, 2000-70, 2000-078, 2000-079, 2000-105, 2000-111
International Brotherhood of Electrical Workers (IBEW), Local 1852	2000-043, 2000-095
International Brotherhood of Electrical Workers (IBEW), Local 1928	2000-002, 2000-099
International Brotherhood of Electrical Workers, Local 625	2000-108
International Brotherhood of Teamsters, Chauffeurs, Warehousemen, Helpers & Miscellaneous Workers, Local 927	2000-085
International Union of Operating Engineers (IUOE), Local 721	2000-106, 2000-109
International Union of Operating Engineers (IUOE), Local 721 & 721B	2000-072
International Union of Operating Engineers (IUOE), Local 721B	2000-075
IWK Grace Health Centre	2000-047
Jacob Santini Construction Services	2000-015
Joneljim Concrete Construction Ltd.	2000-006
Kenmount Ford Sales (1981) Ltd.	2000-052
Kimberly-Clark Nova Scotia	2000-071, 2000-115
Kings County (Municipality)	2000-022

Labourers' International Union of North America, Local 615	2000-015
Labourers' International Union of North America, Local 1115	2000-098
Lynk Electric Ltd.	2000-043
Marine Atlantic Inc.	2000-031
Municipal Assn. of Police Personnel (MAPP)	2000-028, 2000-103, 2000-112
Municipal Ready Mix Ltd.	2000-098
National Automobile, Aerospace, Transportation & General Workers Union of Canada (CAW-Canada)	2000-047
National Automobile, Aerospace, Transportation & General Workers Union of Canada (CAW-Canada), Local 4285	2000-031
National Automobile, Aerospace, Transportation & General Workers Union of Canada (CAW-Canada), Local 4506, Unit 3	2000-052
National Automobile, Aerospace, Transportation & General Workers Union of Canada (CAW-Canada), Local 4600	2000-019, 2000-048, 2000-050, 2000-093
National Automobile, Aerospace, Transportation & General Workers Union of Canada (CAW-Canada), Local 4603	2000-032
National Automobile, Aerospace, Transportation & General Workers Union of Canada (CAW-Canada), Local 4610	2000-086, 2000-087, 2000-088
National Automobile, Aerospace, Transportation & General Workers Union of Canada (CAW-Canada), Local 4620	2000-021
National Automobile, Aerospace, Transportation & General Workers Union of Canada (CAW-Canada), Local 4624	2000-053, 2000-080
National Gypsum (Canada) Ltd.	2000-072
Northside Community Guest Home	2000-038
Nova Scotia (Community Services)	2000-064
Nova Scotia Government Employees Union (NSGEU)	2000-001, 2000-064, 2000-090, 2000-096
Nova Scotia Government Employees Union (NSGEU), Local 79	2000-004
Nova Scotia Government Employees Union (NSGEU), Local 480	2000-082

Nova Scotia (Human Resources)	2000-090, 2000-096
Nova Scotia (Justice) (Corrections)	2000-082
Nova Scotia Nurses' Union (NSNU)	2000-024, 2000-069
Nova Scotia Power Inc.	2000-002, 2000-087, 2000-099
Nova Scotia Teachers' Union (NSTU)	2000-005, 2000-009, 2000-036, 2000-056, 2000-062, 2000-104
Nova Scotia (Transportation and Public Works)	2000-039
Nova Scotia Union of Public Employees (NSUPE), Local 2	2000-023
Nova Scotia Union of Public Employees (NSUPE), Local 12	2000-081
Nova Scotia Union of Public Employees (NSUPE), Local 13	2000-076, 2000-083
OIS-Fisher Inc.	2000-027
Pepsi-Cola Canada Beverages	2000-085
Police Assn. of Nova Scotia	2000-022
Quentin's Roofing Ltd.	2000-059
Riverview Children's Centre	2000-020
Romard, Robert Joseph (Plaintiff)	2000-092
Saint Mary's University	2000-004
Scotian Gold Co-operative Ltd.	2000-094
SCR Electric Services Ltd.	2000-105
Sheet Metal Workers International Assn., Local 56	2000-059
Southwest Regional School Board	2000-009, 2000-084
Strait Regional School Board	2000-104
Surette Battery	2000-044
Swedwood Canada Ltd.	2000-030
Trenton Works Ltd.	2000-029, 2000-034, 2000-045, 2000-046, 2000-066, 2000-077

United Assn. of Journeymen & Apprentices of the Plumbing, Steam-Fitting & Pipe-Fitting Industry of the United States and Canada, Local 244	2000-010, 2000-011
United Brotherhood of Carpenters & Joiners of America, Local 1588	2000-006
United Brotherhood of Carpenters & Joiners of America, Local 2004	2000-030
United Food & Commercial Workers Union (UFCW), Local 864	2000-003
United Mine Workers of America, District No. 26	2000-114
United Steelworkers of America, Local 1015	2000-035
United Steelworkers of America, Local 1231	2000-029, 2000-034, 2000-045, 2000-046, 2000-066, 2000-077
United Steelworkers of America, Local 4883	2000-012
University College of Cape Breton	2000-018, 2000-018. A
Victoria Haven Nursing Home	2000-086, 2000-088
Villa St. Joseph du Lac	2000-067
Western Regional Health Board	2000-014
Westin Nova Scotian Hotel	2000-041, 2000-102
Yarmouth Firefighters' Assn., Local 2094	2000-007
Yarmouth (Town)	2000-007

Part 4

BROWN & BEATTY TOPICAL CODE INDEX

2000

Brown & Beatty Topical Code Index

1 - ARBITRATION OF GRIEVANCES IN CONTEXT

1:0000 ..... Introduction
2000-001, 2000-009, 2000-036
1:5000 ..... Judicial Review of Grievance Arbitration
1:5210 ..... The Requirement of Impartiality
2000-026, 2000-058

2 - JURISDICTION OF THE ARBITRATOR

2:1000 ..... Primary Sources of Jurisdiction
2:1100 ..... The Statutory Requirement
2000-068, 2000-090
2:1200 ..... The Collective Agreement
2000-018. A, 2000-027, 2000-079, 2000-083, 2000-084, 2000-088
2:1210 ..... Individual Contracts of Employment
2000-034, 2000-079
2:1410 ..... Damages
2000-039, 2000-068
2:1440 ..... Rectification
2000-084
2:1450 ..... Compliance Orders
2000-098
2:1470 ..... Reinstatement and Substitution of Penalty
2000-032, 2000-074
2:2000 ..... Secondary Sources of Jurisdiction
2:2100 ..... Statutes
2000-002, 2000-010, 2000-011
2:2220 ..... Applications of Estoppel
2000-039, 2000-081
2:3000 ..... Limits to the Arbitration of Grievances: Arbitrability
2:3110 ..... Parties
2000-052
2:3128 ..... Time-limits
2000-007
2:3130 ..... Waiver of Procedural Irregularities
2000-007, 2000-018. A, 2000-056, 2000-061
2:3210 ..... Delay
2000-007
2:3230 ..... Abandonment, Settlement and Withdrawal
2000-013, 2000-014, 2000-015, 2000-017

3 - THE ARBITRATION PROCESS

3:1000 ..... Pre-hearing Considerations
3:1100 ..... Establishment of the Board of Arbitration
2000-026, 2000-058
3:2000 ..... The Hearing: Preliminary Matters
3:2415 ..... Lay-off and Recall
2000-066
3:2500 ..... The Standard of Proof
2000-003
3:4000 ..... Admissibility of Evidence
3:4400 ..... Extrinsic Evidence
2000-088
3:4420 ..... Negotiating History
2000-028
3:4430 ..... Past Practice
2000-028
3:5000 ..... The Decision Making Process
3:5100 ..... Weighing the Evidence
2000-038, 2000-107

4 - THE COLLECTIVE AGREEMENT

4:1000 ..... Form and Content of the Collective Agreement
4:1200 ..... Ancillary Documents
2000-084
4:1400 ..... Pension, Insurance and Welfare Plans
2000-002, 2000-105, 2000-106, 2000-111, 2000-114
4:1610 ..... Retroactivity
2000-078
4:2000 ..... Interpretation of Collective Agreements
4:2100 ..... The Object of Construction: Intention of the Parties
2000-006, 2000-025, 2000-064, 2000-083, 2000-104, 2000-115
4:2210 ..... Dictionaries
2000-081
4:2230 ..... Statutes
2000-071
4:2300 ..... The Collective Bargaining Context
2000-006
4:2320 ..... Management's Duty to act Fairly
2000-030, 2000-075

5 - ORGANIZATION AND DIRECTION OF THE WORK PLACE

5:0000 . . . . . Introduction
2000-030, 2000-049, 2000-055, 2000-075, 2000-078
5:1000 . . . . . Assignment of Work Outside the Bargaining Unit
2000-004, 2000-005
5:1126 . . . . . Foremen and Supervisors
2000-086
5:1200 . . . . . Bargaining Unit Work
2000-008, 2000-110
5:1300 . . . . . Assignment of Bargaining Unit Work to Non-employees: Contracting out
2000-025, 2000-049, 2000-065, 2000-078, 2000-095
5:1400 . . . . . Assignment of Bargaining Unit Work to Non-unit Employees
2000-033
5:2000 . . . . . Distribution of Work Within the Bargaining Unit
2000-70
5:2200 . . . . . Express Prohibitions in the Agreement
2000-008, 2000-031, 2000-087, 2000-093
5:2300 . . . . . The Requirement of Bona Fides
2000-048
5:2420 . . . . . Criteria: Equal Work or Equal Skill
2000-108
5:2440 . . . . . Revision of Classification and Rates
2000-072, 2000-089, 2000-102
5:2510 . . . . . Vacancies
2000-021, 2000-083, 2000-097, 2000-108
5:2520 . . . . . Job Posting
2000-004, 2000-005, 2000-012, 2000-021, 2000-030
5:3000 . . . . . Scheduling Work
5:3100 . . . . . Work Hours and Shifts
2000-033, 2000-101
5:3220 . . . . . Proprietary Rights to Overtime Assignments
2000-087, 2000-093, 2000-100, 2000-109

6 - SENIORITY

6:1000 . . . . . Acquisition and Termination
6:1120 . . . . . Non-unit Employment
2000-037
6:2000 . . . . . Application of Seniority
2000-018, 2000-075, 2000-080, 2000-097, 2000-099, 2000-103, 2000-110
6:2100 . . . . . Promotion, Demotion and Transfer
2000-018, 2000-039, 2000-080, 2000-097, 2000-103
6:2200 . . . . . Lay-off
2000-006, 2000-031, 2000-099
6:2330 . . . . . Bumping
2000-073

6:2340 . . . . . Bumping Upwards
2000-073
6:3000 . . . . . The Skill And Ability Requirement
2000-004, 2000-006
6:3200 . . . . . Proof of Ability
2000-004, 2000-012, 2000-102
6:3210 . . . . . Senior Employee With the Required Ability
2000-019
6:3230 . . . . . Trial, Training and Familiarization Periods
2000-004, 2000-012, 2000-069
6:3300 . . . . . Ability and Qualifications Criteria
2000-012, 2000-018, 2000-062
6:3320 . . . . . Education and Experience
2000-019
6:4000 . . . . . Remedial Authority of the Arbitrator
6:4100 . . . . . Promotions
2000-062

7 - DISCIPLINE

7:1000 . . . . . The Power to Discipline
2000-091
7:1300 . . . . . Collective Agreement Limitations
2000-098
7:2000 . . . . . Discipline and Discharge Procedures
7:2100 . . . . . Procedural Requirements and the Power to Discipline
2000-016
7:2300 . . . . . Burden of Proof
2000-050
7:3000 . . . . . Grounds for Discipline
7:3010 . . . . . Off-duty Behaviour
2000-096
7:3100 . . . . . Attendance at Work
2000-029, 2000-034
7:3110 . . . . . Notification of Absence
2000-016
7:3120 . . . . . Leave of Absence
2000-068
7:3200 . . . . . Employee Disability
2000-066, 2000-091
7:3210 . . . . . Innocent Absenteeism
2000-067
7:3220 . . . . . Inability to Discharge Employment Obligations
2000-048, 2000-112, 2000-113
7:3230 . . . . . Medical Examinations
2000-112

7:3240 ..... Employer Responses Other than Termination
2000-066, 2000-091
7:3250 ..... Onus
2000-112
7:3310 ..... Theft
2000-085
7:3314 ..... Penalty
2000-085
7:3330 ..... Duty of Fidelity: Untrustworthiness and Conflict of Interest
2000-074, 2000-107
7:3430 ..... Fighting, Assault
2000-032, 2000-038, 2000-050, 2000-096
7:3610 ..... Refusal to Follow Instructions
2000-029, 2000-053, 2000-057, 2000-094
7:3612 ..... Essential Ingredients
2000-029, 2000-053, 2000-094
7:3621 ..... Health and Safety
2000-003
7:3626 ..... Reasonable Personal Excuses
2000-113
7:4000 ..... Disciplinary Penalties
2000-003, 2000-008, 2000-020, 2000-042, 2000-057, 2000-094
7:4100 ..... Scope of Review
2000-016, 2000-057, 2000-096
7:4200 ..... Disciplinary Sanctions
2000-042
7:4210 ..... The Nature of Disciplinary Sanctions
2000-054
7:4300 ..... The Reasonableness of the Penalty
2000-020
7:4310 ..... The Doctrine of the Culminating Incident
2000-016, 2000-077, 2000-107
7:4400 ..... Mitigating Factors
2000-003
7:4412 ..... Provocation
2000-094
7:4414 ..... Discrimination
2000-008
7:4416 ..... Warnings
2000-008
7:4422 ..... Rehabilitative Potential
2000-077
7:7000 ..... Discharge Distinguished
7:7200 ..... Retirement
2000-002, 2000-088

8 - COMPENSATION

8:1000 ..... Entitlement to Wages
2000-035, 2000-072
8:1100 ..... Equal Pay for Equal Work
2000-035
8:1300 ..... Retroactivity
2000-024
8:2000 ..... Premium Rates and Bonuses
8:2120 ..... Weekly Overtime
2000-115
8:2130 ..... Overtime Work
2000-082
8:3000 ..... Fringe Benefits
8:3100 ..... Holiday Pay
2000-064
8:3220 ..... Credited Service for Vacations
2000-052
8:3240 ..... Scheduling Vacations
2000-028
8:3300 ..... Illness: Benefits and Other Rights
2000-082
8:3310 ..... Payment of Policy Costs: Medical Premiums
2000-040
8:3320 ..... Qualifying for Medical and Disability Benefits
2000-067
8:3322 ..... Medical Plans Outside the Agreement
2000-076
8:3340 ..... Entitlement to a Job
2000-113
8:3510 ..... Bereavement Leave: Purpose and Entitlement
2000-071
8:3700 ..... Paid Breaks
2000-081

9 - UNION RIGHTS AND LIABILITIES

9:1000 ..... Union Rights
9:1100 ..... Recognition
2000-025
9:1200 ..... Union Security
2000-059, 2000-106, 2000-111
9:1300 ..... Grievance Procedure
2000-092
9:1400 ..... Union Business on Company Time
2000-054